

Fordham International Law Journal

Volume 34, Issue 4

2011

Article 6

Land is Life, Land is Power”: Landlessness, Exclusion, and Deprivation in Nepal

Elisabeth Wicker^{*}

*

Copyright ©2011 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

Land is Life, Land is Power”: Landlessness, Exclusion, and Deprivation in Nepal

Elisabeth Wickeri

Abstract

This Report presents the findings of this research effort. A comprehensive consideration of the many aspects of land ownership in Nepal, including the related issues of agricultural development, the impact of nonstate actors in newly-formed special economic zones, and the claims of landlords returning to land seized during the Maoist conflict is beyond the scope of this project. The Report and study focused on documenting the impact that inadequate access to land has on the human rights of landless people, including rights to housing, food, water, work, and access to justice. The Report consists of four parts. Part I provides a background of the legal framework and political context of land rights in Nepal and details the domestic law and documents several of its shortcomings. It also provides background on gender, ethnic, and caste discrimination despite prohibitions. Part II presents the delegation’s findings regarding the impact of landlessness on a range of rights, focusing on the impact on socio-economic rights and the attendant vulnerability to further exploitation that this impact has. Part III considers the place of land rights in the international legal framework. It considers the gap—the lack of an explicit “right to land”—that exists and its impact, and also examines the relevant human rights that underlie access to land. The final Part provides some conclusions and recommendations to the Nepali government and civil society, as well as the international community. The recommendations are drafted with the understanding that the constitution drafting process is ongoing with a view to providing possible steps that are realistic and also effective. The Crowley Program commends the government for its commitment to addressing the problems of landlessness in the Interim Constitution and in numerous public statements, and joins the government in hoping that these changes will provide relief to the many landless people that the delegation met.

“LAND IS LIFE, LAND IS POWER”¹: LANDLESSNESS, EXCLUSION, AND DEPRIVATION IN NEPAL

Elisabeth Wickeri *

INTRODUCTION	932
I. LEGAL AND POLITICAL CONTEXT OF LAND RIGHTS IN NEPAL	937
A. Overview	938
B. Nepal’s International Obligations	940
C. Codified Discrimination	945
D. Land and Property in Nepali Law	949
1. The Traditional Legal Framework: State Landlordism	949
a. Overview of the <i>Raikar</i> System	949
b. Tenants Rights	952
c. Bonded Labor	953
2. Dismantling <i>Raikar</i> : Changes and Status Quo	955
a. Overview	955
b. Emergence of Private Property Rights	956
c. Land Ceilings	959
d. Rights and Registration and “Invisible Landlessness”	960
e. Tenure Security	962
f. Indigenous Rights in Land	962
E. Land, Conflict, and the New Nepal	963
1. Overview	963
2. Land and Conflict	963
3. Transition and Nepal’s New Constitution	966

1. Interview with Bandu Ram Chaudri, Farmer, in Kamdi VDC, Banke, Nepal (Mar. 14, 2009).

* Fellow, Joseph R. Crowley Program in International Human Rights, Leitner Center for International Law and Justice 2008–2009; Executive Director, Leitner Center for International Law and Justice, 2009–Present; J.D., New York University School of Law, 2004; B.A., Smith College, 2000.

II. LANDLESSNESS IN NEPAL: THE IMPACT OF EXCLUSION.....	970
A. Overview	970
B. Caught in the Power of the Land Certificate	971
C. Landlessness, Poverty, and Living Standard.....	975
D. Tenant Exploitation and Security of Tenure	978
1. Evictions and Security.....	979
2. Exploitation	981
3. Inequality and Discrimination	984
4. Political Exclusion and Access to Justice	988
E. Emerging Trends and Opportunities	989
1. Pro-Poor Land Rights Advocacy.....	989
2. State Responses and Reform.....	990
3. Transitional Justice and the International Community	994
III. LAND IN THE INTERNATIONAL LEGAL FRAMEWORK.....	997
A. A Rights-Based Approach to Land	997
B. The Right to Land: A Normative Gap.....	1000
C. Relevant Provisions on Land in International Human Rights Law.....	1005
1. The Right to Property in International Law	1005
2. Right to an Adequate Standard of Living and Related Socio-Economic Rights	1013
3. Specific Land Rights Protections.....	1019
CONCLUSIONS AND RECOMMENDATIONS.....	1022
A. Conclusions	1023
B. Recommendations	1023
1. To the Government of Nepal.....	1023
2. To Nepali Civil Society	1024
3. To the International Community	1024
ANNEX I: Schedule Of Interviews, March 2009	1025
ANNEX II: Schedule of Interviews, May 2009	1028
ANNEX III: Schedule Of Interviews, March–April 2010.....	1040

INTRODUCTION

Up to one quarter of the world's poor is estimated to be landless, a condition that in rural areas is often the best predictor of poverty and hunger.² Access to land and its resources, land tenure security, ownership and control over land, and the ability to dispose of land or transfer rights in land are necessary for the fulfillment of fundamental human rights, and are frequently tied to the indigenous, ethnic, and cultural identities of peoples. The social and economic impacts of landlessness,³ including hunger, threats to health, homelessness, and exploitative labor conditions, create conditions intensifying exploitation by both landowners and states.

In Nepal, landlessness is a deeply entrenched and widespread problem, rooted in a long history of feudal land governance, political complacency and nepotism, and a heavily taxed, yet ultimately dependent and weak, farmer class. The resultant skewed landownership patterns were compounded by a deeply discriminatory and strictly hierarchical society that excluded women, ethnic minorities and tribal groups, and especially those of low-caste (particularly Dalits). Despite reforms that began in fits and spurts in the early 1950s to dismantle the system, lack of political will and any mechanism for oversight means that the same power dynamics that were in place two centuries ago persist today.

Land ownership is a key indicator of identity, power, wealth, and political access. Yet up to 25% of Nepal's population is

2. See Centre on Housing Rights and Evictions [COHRE], *Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles*, at 3–5 (2007), available at <http://www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/PinheiroPrinciplesHandbook2007.pdf>; *Land: Statistics*, RURAL POVERTY PORTAL, <http://www.ruralpovertyportal.org/web/guest/topic/statistics/tags/land> (last visited Dec. 26, 2010). Two hundred million people living in rural areas are landless. UNITED NATIONS HUMAN SETTLEMENT PROGRAM [UN-HABITAT], *SECURE LAND RIGHTS FOR ALL* 3 (2008). Approximately 75% of the world's population living in extreme poverty (earning less than US\$1 per day) live in rural areas. See Roy L. Prosterman & Tim Hanstad, *Land Reform in the Twenty-First Century: New Challenges, New Responses*, 4 SEATTLE J. SOC. JUST. 763, 763 (2006).

3. Landless people own no land, and the condition of landlessness is typically characterized by people living or working on land in which the individual has no legal rights.

estimated to be landless or near-landless⁴: the bottom 47% of agricultural households control only 15% of agricultural land; the top 5% control more than 37%.⁵ Documentation of the human rights consequence of landlessness reveals a wide scope of impact: landlessness in Nepal is characterized by exploitative labor conditions for tenant farmers and near bonded-labor conditions for bonded laborers freed as recently as 2002 and 2008; frequent, arbitrary, and often violent evictions; lack of access to traditional resources (e.g., fisheries and forests) for tribal and indigenous groups; lack of access to water and food resources; inability to access police and the judiciary; and deep discrimination against women, Dalits, ethnic and religious minorities, and tribal groups who make up a disproportionate proportion of landless people.⁶

The exclusion of the majority of Nepal's population from access to land and its resources contributed to growing unrest in the twentieth century culminating in the ten-year Maoist insurgency that insisted on reforms providing "land to the tiller."⁷ The Comprehensive Peace Agreement reached between the Maoists and the government in 2006,⁸ the 2007 Interim Constitution⁹ now governing Nepal,¹⁰ and several transitional

4. *Nepal: Land Tenure Reforms "Urgently Needed,"* IRIN, Dec. 8, 2010, <http://www.irinnews.org/Report.aspx?ReportId=91313>.

5. UNITED NATIONS DEVELOPMENT PROGRAM [UNDP], HUMAN DEVELOPMENT REPORT: EMPOWERMENT AND POVERTY REDUCTION 2004, at 43 (2004), *available at* http://hdr.undp.org/en/reports/nationalreports/asiathepacific/Nepal/Nepal_2004_en.pdf.

6. *See infra* Part II.D.3 for an examination of the findings of the Crowley Delegation.

7. *Nepal: Interview with Comrade Baburam Bhattari*, WORLD PEOPLE'S RESISTANCE MOVEMENT (BRITAIN), Oct. 26, 2009, <http://www.wprmbrtain.org/?p=926> ("To complete the New Democratic Revolution you have to . . . confiscate the property of the feudal landlords and distribute it to the peasants on the principle of 'land to the tiller.' This was the basic policy of our party during the People's War, which we practiced in the rural areas.").

8. Comprehensive Peace Agreement, Nepal-Communist Party of Nepal (Maoist), Nov. 21, 2006, *available at* http://www.usip.org/files/file/resources/collections/peace_agreements/nepal_cpa_20061121_nepali.pdf [hereinafter CPA] (unofficial English version *available at* http://www.usip.org/files/file/resources/collections/peace_agreements/nepal_cpa_20061121_en.pdf).

9. *See infra* notes 28–32 and accompanying text.

10. The May 26, 2010 deadline initially imposed on the Constituent Assembly to adopt a new constitution was extended by one year after a political deadlock. In the interim, the 2007 Constitution still governs. Gopal Sharma, *Nepal Assembly Deadline*

mechanisms instituted, all include goals to confront land rights and grapple with the problems facing the landless population. Yet since Maoist ascent to (and subsequently, descent from) power, little has changed in terms of policy, legislation, and implementation. While ongoing political instability certainly impacts the government's ability to deal simultaneously with the multiple causes and problems associated with landlessness, landlessness is a factor contributing to that instability, which suggests that alleviating landlessness and its consequences is in the government's own interest. As a country in transition, Nepal is uniquely placed to address injustices of the past while also creating stronger mechanisms to protect landless peoples and prevent abuses associated with landlessness.

The ten-year conflict exacerbated existing problems of access to land, but landlessness is not a problem unique to Nepal: rural landlessness is increasing worldwide¹¹ as land in rural areas comes under multiple pressures, including population growth, fragmentation, land use conversion, environmental degradation, conflict, and the impact of natural disasters.¹² Without secure land rights, individuals and communities live under the constant threat of eviction, without predictable and secure access to fundamental rights, including food, housing, water, and health. Yet the right to land, and the broader implications of access to land in the international human rights framework, remain somewhat imprecise.

Access to land is a cross-cutting issue, impacting a range of rights that create the relevant obligations due to landless groups. Yet, while "land rights" are frequently referenced in the international legal framework,¹³ land rights for particular groups have been defined, land has been identified as indispensable for a range of rights, and general principles in international law provide protections that relate to access to land, an explicit consideration of the right to land has yet to be undertaken.¹⁴ By examining the case of Nepal, this study suggests that the

Extended by One Year, REUTERS, May 29, 2010, available at <http://in.reuters.com/article/2010/05/28/idINIndia-48896220100528>.

11. UN-HABITAT, *supra* note 2, at 2.

12. *Id.*

13. For an overview, see Elisabeth Wickeri & Anil Kalhan, *Land Rights Issues in International Human Rights Law*, in INSTITUTE OF HUMAN RIGHTS AND BUSINESS (2009).

14. See *infra* Part IV.

international community should revisit the importance of this limited resource and clearly identify state obligations and the impact on fundamental human rights.¹⁵

This Report represents the culmination of a project undertaken by the Leitner Center for International Law and Justice at Fordham University School of Law between 2008 and 2010 to study land rights in the international human rights framework and to consider the impact of inequitable access to land in Nepal.

A delegation from Fordham visited Nepal in May 2009 and in March 2010 to conduct interviews and document the impact of inequitable access to land. The Fordham delegation was led by the 2008–09 Crowley Fellow in International Human Rights, Elisabeth Wickeri, with Fordham Law School Professors James Kainen and Martha Rayner, Drexel University Earle Mack School of Law Professor Anil Kalhan, and Durham Law School Professor Dr. Aoife Nolan.¹⁶ The delegation also included eight second-year Fordham Law School students: Amal Bouhabib, Corey Calabrese, Millie Canter, Benjamin Goldstein, Noushin Ketabi, Ganesh Krishna, David Mandel-Anthony, and Amisha Sharma.

Prior to the fact-finding trip undertaken in May 2009, the delegation participated in an intense program of study throughout the academic year, including a seminar on human rights in Nepal. In Nepal, the delegation conducted individual and group interviews with over 500 landless or land-poor individuals in Nepal's Terai¹⁷ and Hills districts and documented the impact that inadequate access to land has on economic, social, and cultural rights as well as access to justice. The delegation also interviewed land rights organizers, community leaders, local and national government officials, political party representatives, representatives of nongovernmental

15. This examination should build on the important work already undertaken by some of the UN special procedure mandates, including that of the Special Rapporteur on the Right to Food and the Special Rapporteur on the Right to Adequate Housing. For a more detailed examination, see *infra* Part IV.

16. During the fieldwork, Dr. Nolan was attached to Queens University Belfast School of Law.

17. The Terai region is also referred to as *Madhes*, and the people are termed *Madhesi*. See Jason Miklian, *Nepal's Terai: Constructing an Ethnic Conflict*, PRIO PAPERS, July 20, 2008, at 3, available at [http://www.prio.no/sptrans/-1126936656/Nepals_Terai_\(South_Asia_Briefing_Paper_1\).pdf](http://www.prio.no/sptrans/-1126936656/Nepals_Terai_(South_Asia_Briefing_Paper_1).pdf).

organizations and international organizations, lawyers, judges, and academics.¹⁸

This Report presents the findings of this research effort. A comprehensive consideration of the many aspects of land ownership in Nepal, including the related issues of agricultural development, the impact of nonstate actors in newly-formed special economic zones, and the claims of landlords returning to land seized during the Maoist conflict is beyond the scope of this project. The Report and study focused on documenting the impact that inadequate access to land has on the human rights of landless people, including rights to housing, food, water, work, and access to justice. The Report consists of four parts. Part I provides a background of the legal framework and political context of land rights in Nepal and details the domestic law and documents several of its shortcomings. It also provides background on gender, ethnic, and caste discrimination despite prohibitions. Part II presents the delegation's findings regarding the impact of landlessness on a range of rights, focusing on the impact on socio-economic rights and the attendant vulnerability to further exploitation that this impact has. Part III considers the place of land rights in the international legal framework. It considers the gap—the lack of an explicit “right to land”—that exists and its impact, and also examines the relevant human rights that underlie access to land. The final Part provides some conclusions and recommendations to the Nepali government and civil society, as well as the international community. The recommendations are drafted with the understanding that the constitution drafting process is ongoing with a view to providing possible steps that are realistic and also effective. The Crowley Program commends the government for its commitment to addressing the problems of landlessness in the Interim Constitution and in numerous public statements, and joins the government in hoping that these changes will provide relief to the many landless people that the delegation met.

18. The delegation conducted interviews in Kathmandu, as well as Banke, Dadheldura, Dang, Kailali, Nawalparasi, and Rupandehi Districts in the Terai and Hills regions of Nepal. The full names of interviewees in rural communities have been withheld, unless the interviewee explicitly stated that she or he was willing to be cited publicly. *See* Annex I.

Acknowledgements

The Leitner Center benefited from the contributions and assistance of many individuals and organizations in Nepal. First and foremost, the Leitner Center would like to thank Jagat Basnet, Executive Director of the Community Self-Reliance Center, and the Center's regional and district coordinators and Kathmandu staff, including Jagat Deuja, Jabal Singh Tiruwa, Chhabi Lal Chuara, and Chahana Chitrakar. The Community Self-Reliance Center facilitated our access to communities and individuals and shared their knowledge, insight, and stories of strength. We are deeply indebted to them. Several other individuals graciously facilitated our work in Nepal. In particular, we thank Mr. Dinesh Tripathi and for facilitating our outreach to the Bar Association as well as providing an opportunity to meet with Justices of the Nepali Supreme Court. We would also like to thank the law students and professors that traveled to Nepal for their help in gathering information, and the law students for producing papers which aided in producing this Report.

Finally, and most importantly, we thank the hundreds of men and women in Nepal who took time out of their working days to meet with us, which in several cases meant forgoing much needed paid work. We are grateful to them for generously sharing their stories, experiences, and struggles with us. In particular, we thank the many land rights organizers who shared their stories and challenges. Their unwavering courage in the face of great challenges continues to inspire us.

I. *LEGAL AND POLITICAL CONTEXT OF LAND RIGHTS IN NEPAL*

*"Land should belong to "tenants." Land under the control of the feudal system should be confiscated and distributed to the landless and the homeless."*¹⁹

19. Baburam Bhattarai, Chairman, Central Committee, United People's Front-Nepal, Forty Point Charter of Demands, ¶ 27 (Feb. 4, 1996), available at <http://www.satp.org/satporgtp/countries/nepal/document/papers/40points.htm>.

A. Overview

The United Nations Development Programme ("UNDP") classifies Nepal as a Least Developed Country ("LDC").²⁰ An extremely poor state, Nepal's economy and labor force is heavily reliant on agriculture,²¹ and ownership of land is therefore the primary source of economic subsistence and productivity. Land is also socially and politically important²² and serves as an indicator of wealth and power. Land affects a host of interrelated social, political, and economic goods, from education, to water, to electricity.²³ Nepal's extreme geography,²⁴ however, makes at

20. Almost one quarter of its population lives on less than US\$1 a day, and 68.5% of the population lives on less than US\$2 a day. UNDP, HUMAN DEVELOPMENT REPORT 2007/2008, at 239, available at http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf (ranking Nepal 142 out of 177 countries in its Human Development Index).

21. Approximately 40% of Nepal's Gross Domestic Product ("GDP") is derived from agriculture. *Nepal*, UNITED NATIONS OFFICE OF THE HIGH REPRESENTATIVE OF THE LEAST DEVELOPED COUNTRIES, LANDLOCKED DEVELOPING COUNTRIES AND SMALL ISLAND DEVELOPING STATES [UN-OHRLLS], <http://www.unohrlls.org/en/orphan/117> (last visited Mar. 21, 2011) (citing this figure as 38%); *Nepal at a Glance*, WORLD BANK, (Dec. 9, 2009), http://devdata.worldbank.org/AAG/npl_aag.pdf (measuring the annually percentage of GDP from agriculture as 33.7% in 2008); *Nepal—Agriculture and Food—Country Profile*, WORLD RESOURCES INSTITUTE [WRI], <http://earthtrends.wri.org/text/agriculture-food/country-profile-130.html> (last visited Mar. 21, 2010) (citing this figure as 40.3%). At least 65% of the labor force depends on agriculture for its livelihood. Jagat Deuja, *Landlessness in Nepal*, in LAND POLITICS AND CONFLICT IN NEPAL: REALITIES AND POTENTIALS FOR AGRARIAN TRANSFORMATION 182 (Bishnu Raj Upreti et. al eds., 2008) (citing that based on the 2001 Nepali Agricultural Census, 65% of Nepal's total population is dependent on agriculture for their living); MAHESH C. REGMI, LANDOWNERSHIP IN NEPAL 1 (1976) (citing this figure as 93% of the working population, referencing it as the highest percentage of laborers employed in agriculture among South East Asian countries); Int'l Labour Office [ILO], *Social Protection for the People in the Informal Economy of Nepal*, 4 (2004), available at http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-ilo-kathmandu/documents/publication/wcms_113829.pdf (citing that "nearly 80%" of Nepal's population is engaged in agricultural labor); WRI, *supra* (citing the figure as 82.9%).

22. Jagat Basnet, *Land and Land Tenure Security in Nepal* 5 (Land Watch & Community Self Reliance Ctr. (CRSC) Nepal, Working Paper, 2008). See also Interview with Suprasad Bandari, Acting Chairperson, National Land Rights Forum, in Kathmandu, Nepal, May 20, 2009 ("Land is associated with social status, not having land makes us vulnerable to [the] landlord, they would always tell us we could not participate in society, [and that] made me realize we would always be dominated.").

23. See *infra* Part II.A–B; see also CSRC, LAND AND LAND TENURE SECURITY IN NEPAL 4–5 (2009).

24. In the North, the Himalayan mountain range includes eight of the world's highest peaks; these descend to hilly areas cutting across the middle region of the country, and then to flat farming terrain in the Terai region along an open border with

least 75% of Nepal's land uncultivable.²⁵ Moreover, feudal laws and policies that have undergone no meaningful reforms have created imbalanced landownership patterns.²⁶

Twentieth century Nepali history is marked by political struggles, peasant uprisings, and conflict. This conflict has frequently been tied to control over natural resources, and in particular, has related to ownership, control, and occupation of land. Although the state has sought, for over half a century, to address land disparities, land reform legislation and programs have largely failed in both scope and implementation, resulting in only superficial changes that have exacerbated rather than alleviate discrepancies.²⁷ The result is that land and agriculture continue to play as large a role in exacerbating poverty and injustice in Nepal today as they did 100 years ago, and that the inequities of the feudal land hierarchy continue to oppress a vast portion of the Nepali population.

The 2007 Interim Constitution remains the overarching document within Nepal's legal framework since the deadline for the passage of the permanent constitution was pushed back to May 2011. It includes broad equality protections, anti-discrimination provisions, and an impressive number of substantive human rights.²⁸ The constitution protects a number of economic rights, though in a somewhat limited fashion, including the right to food²⁹ and the right education.³⁰ It also

India. *Nepal*, U.S. DEP'T OF STATE, (Apr. 16, 2010), <http://www.state.gov/r/pa/ei/bgn/5283.htm>.

25. *Id.*

26. As of 2004, 5% of the population owned 37% of the land. CSRC, *supra* note 23, at viii. Some 75% of rural households hold under one hectare of land, considered to be the "minimum to meet subsistence." LIZ ALDEN WILY ET AL., CSRC, LAND REFORM IN NEPAL: WHERE IS IT COMING FROM AND WHERE IS IT GOING? 123 (2008).

27. *Id.* at 99.

28. NEPAL INTERIM CONST. (2007), pt. 3. The deadline for the passage of the final constitution has been extended to May 2011. For further discussion on the adequacy of the rights protections in the current draft of the constitution, see CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE [CHRGJ], RIGHTS WITHIN REACH: SECURING EQUALITY AND HUMAN RIGHTS IN NEPAL'S NEW CONSTITUTION (2010), *available at* <http://www.chrgj.org/projects/docs/rightswithinreach.pdf>; Elisabeth Wickeri, *No Justice, No Peace*, 2 DREXEL L. REV. 427, 427 (2010). *See infra* Part I.E.3.

29. NEPAL INTERIM CONST. (2007), art. 18(3) ("Every citizen shall have the right to food sovereignty as provided for in the law.")

30. *Id.* art. 17 (providing that "[e]ach community shall have the right to receive basic education in their mother tongue as provided for in the law," and that everyone has the right to free primary education).

provides for the right to property,³¹ and provides a number of provisions committing the state to engage in land reform.³²

The call for land reform as a rallying cry has long been a tool used by politicians for garnering support in Nepal: during the 1996–2006 conflict, Maoists characterized their fight as an “agrarian” revolution, aimed at “break[ing] the chains of feudalism.”³³ The peace agreement reached in 2006 between the Maoists and the government included land reform provisions and the end of “feudal land ownership.”³⁴ The new Nepali government, formally established in 2008, and which has already seen three successive Prime Ministers, has repeatedly committed itself to land reform.³⁵ Yet it remains to be seen whether the current government will be able to succeed where past governments have failed to craft policies that rise above Nepal’s history of oppressive land policies and engage in genuine land reform.

B. *Nepal’s International Obligations*

Still emerging from the human, economic, and human rights wounds of a ten-year civil war, Nepal is facing serious security, poverty, and human rights challenges. A party to the United Nations (“UN”) Charter and seven of the eight core international human rights treaties currently in force, including the International Covenant on Economic, Social and Cultural Rights (“ICESCR” or “Covenant”), the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”),³⁶ Nepal is bound by international human rights law.

31. *Id.* art. 19.

32. *See, e.g., id.* art. 33(f).

33. LI ONESTO, *DISPATCHES FROM THE PEOPLE’S WAR IN NEPAL* 67–68 (2005).

34. CPA, *supra* note 8, ¶¶ 3.7, 3.10; *see infra* notes 228–35 and accompanying text.

35. *See* NEPAL INTERIM CONST. (2007), art. 33(f).

36. Nepal is a party to the International Covenant on Economic, Social and Cultural Rights, art. 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; the International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195 [hereinafter CERD]; the Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW]; the Convention against Torture and

Nepal's international obligations also form part of enforceable domestic law, as stipulated by the Nepal Treaty Act.³⁷ This Act further provides that provisions of Nepali laws that are inconsistent with the treaty are void.³⁸

A fragile state, the UN is deeply involved in its transition with United Nations Development Program ("UNDP") and Office of the High Commissioner for Human Rights ("OHCHR") offices in Kathmandu and as well as field offices, and other programs. Nepal also houses numerous international aid organizations, donor agencies, and other nongovernmental organizations. Clarifying the human rights components of land as well as the relevant obligations related to substantive rights is therefore timely and will promote the development of effective policies to combat landlessness.

In addition to the core human rights treaties, Nepal has ratified seven of the eight core International Labor Organization ("ILO") conventions protecting international labor rights.³⁹ Significantly, in 2007, Nepal became one of twenty countries to ratify ILO Convention No. 169 on the Protection of Indigenous Rights.⁴⁰ Under the convention, Nepal had one year to bring its legislation, policies, and programs in line with the provisions of

Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; the Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; and the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, Annex, U.N. Doc. A/RES/61/106 (Jan. 24, 2007).

37. Nepal Treaty Act, 1990, § 9(1) (entered into force Nov. 11, 1990).

38. *Id.*

39. *Ratifications of the Fundamental Human Rights Conventions by Country*, ILO (Nov. 11, 2010), <http://www.ilo.org/ilolex/english/docs/declworld.htm>. Of the eight core ILO conventions, Nepal has ratified the Forced Labour Convention (No. 29), June 28, 1930, 39 U.N.T.S. 35; Convention (No. 105) Concerning the Abolition of Forced Labour, June 25, 1957, 320 U.N.T.S. 291; Convention (No. 98) Concerning the Application of the Right to Organise and to Bargain Collectively, July 1, 1949, 96 U.N.T.S. 258; Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, June 29, 1951, 165 U.N.T.S. 303; Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation, June 25, 1958, 362 U.N.T.S. 32; Convention (No. 138) Concerning Minimum Age for Admission to Employment, June 26, 1973, 1015 U.N.T.S. 298; Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 2133 U.N.T.S. 163.

40. Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, June 27, 1989, 1650 U.N.T.S. 383 [hereinafter Convention No. 169]; see Press Release, ILO, Nepal's Move Inspires Asian Indigenous Leaders (Apr. 27, 2007), available at http://www.ilo.org/kathmandu/info/public/pr/lang-en/WCMS_119185/index.htm.

the convention, which include the rights of indigenous peoples to employment, health, and education.⁴¹ The convention also includes substantial provisions protecting the rights of indigenous peoples to their ancestral land.⁴²

Land, as a necessary resource for food production, access to water, and housing, most obviously impacts a range of socio-economic rights. The core international agreement governing those rights is the ICESCR, under which states parties are obligated to take steps, to the maximum of their available resources, with a view to “achieving progressively the full realization of the rights . . .”⁴³

International law and analyses have repeatedly affirmed that economic, social, cultural, civil, and political rights are all equal and interrelated, and must be treated in the same manner.⁴⁴

41. Convention No.169, *supra* note 40, arts. 20, 25, 27, 30.

42. *Id.* arts. 13–19; *see infra* Part IV.C (discussing international protections).

43. ICESCR, *supra* note 36, art. 2.

44. *See, e.g.*, Optional Protocol to the ICESCR, pmbl., U.N. Doc. A/RES/63/117 (Dec. 10, 2008) [hereinafter ICESCR Optional Protocol] (“*The States Parties to the present Protocol, . . . [r]eaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, . . . [h]ave agreed . . .*”) (emphasis in original); Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, ¶ 4, U.N. Doc. E/C.12/2000/13 (Oct. 2, 2000) (“It is now undisputed that all human rights are indivisible, interdependent, interrelated and of equal importance for human dignity. Therefore, States are as responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights.”); World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 5, U.N. Doc. A/CONF. 157/24 (July 12, 1993) (“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”); International Conference on Human Rights, April 22–May 13, 1968, *Proclamation of Teheran*, ¶13, U.N. Doc. A/CONF.32/41 (May 13, 1968) (“Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights, is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development[.]”). *See also* U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., & Cultural Rights [CESCR], *The World Food Crisis*, ¶ 4, U.N. Doc. E/C.12/2008/1 (May 20, 2008) (“The food crisis underscores the interdependence of all human rights, as the enjoyment of the human right to adequate food and freedom from hunger is of paramount importance for the enjoyment of all other rights, including the right to life.”). The United Nations has also frequently affirmed that, in its activities that promote human rights, it gives equal weight to civil, political, economic, social, and cultural rights. *See, e.g.*, G.A. Res. 60/251, ¶4, U.N. Doc. A/RES/60/251 (Apr. 3, 2006) (“*The General Assembly . . . [d]ecides further that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to*

However settled the law, arguments separating them into opposing categories of rights that are treated differently in nature, content, and obligation, continue to be perpetuated by some states and commentators.⁴⁵ Further, many states do not give

enhancing the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development[.]” (emphasis in original); G.A. Res. 32/130, ¶ 1(a), U.N. Doc. A/RES/32/130 (Dec. 16, 1977) (“*The General Assembly . . . [d]ecides that the approach to the future work within the United Nations system with respect to human rights questions should take into account the following concepts: (a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights[.]*”) (emphasis in original). Whereas there are differences between the ICCPR and ICESCR that can be acknowledged, neither creates a hierarchy of rights. See, e.g., HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 275 (3d ed. 2007) (noting that there are differences in the terminology and that the obligations are distinct, but the rights are interrelated).

45. See, e.g., José E. Alvarez, *How Not to Link: Institutional Conundrums of an Expanded Trade Regime*, 7 WIDENER L. SYMP. J. 1, 11 (noting that only some states have provided for judicially enforceable economic and social rights). Recently, the debate over whether and how to adopt an optional protocol to the ICESCR that would allow communications alleging violations of state obligations have crystallized the way in which some states view their obligations to implement economic, social and cultural rights differently. The Optional Protocol, which was adopted unanimously by the General Assembly on December 10, 2008 and opened for signature on September 24, 2009, ultimately provided for communications on the basis of all rights in the Covenant, rather than providing for an à la carte (or selective) approach to rights as advocated by some states during the drafting. See ICESCR Optional Protocol, *supra* note 44. The High Commissioner for Human Rights, prior to the Optional Protocol, hoped that it would “send a strong and unequivocal message about the equal value and importance of *all* human rights.” Louise Arbour, High Comm’r for Human Rights to the Open-Ended Working Group, Statement on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Mar. 31, 2008), available at http://www.unhchr.ch/hurricane/hurricane.nsf/view01/56935B5FB6A5B37_6C12574250039EAE0?opendocument. Despite those calls and the form that it ultimately took, during the drafting process, many states urged for a system that would treat economic, social, and cultural rights differently to the counterpart optional protocol to the ICCPR. Notably, states from the global North, including Australia, Canada, Norway, the Russian Federation, and the United States suggested during the working group sessions that a complaints procedure may not be appropriate for the ICESCR due to the nature of the rights and their imposition on state resource allocation. See, e.g., ECOSOC, *Report of the Open-Ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on Its Third Session*, ¶¶ 9, 11, 18, 21, 23, U.N. Doc. E/CN.4/2006/47 (Mar. 14, 2006); ECOSOC, *Report of the Open-Ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on Its Second Session*, ¶¶ 6, 15, 17, U.N. Doc. E/CN.4/2005/52 (Feb. 10, 2005).

equal protection to economic, social and cultural rights,⁴⁶ and those rights are often sidelined in international discourse.⁴⁷

Because of this, a distinction has been made between the obligations arising under each of the major covenants as being progressive versus immediate.⁴⁸ Despite this description, parties to the ICESCR also have obligations of immediate effect that are continuous, much like obligations under the ICCPR. These are the obligation of nondiscrimination, and the obligation to “take steps”⁴⁹ using “all appropriate means,”⁵⁰ which goes beyond passing legislation.⁵¹ These steps “must be taken within a reasonably short time after the Covenant’s entry into force[,]”⁵² and states must “move as expeditiously and effectively as

46. As of January 2007, there were 160 state parties to the ICESCR, and 165 state parties to the ICCPR. Although “the great majority of governments have taken some sort of intermediate position” with regard to support for the two sets of rights, there is a lack of actual entrenchment of economic, social and cultural rights in their constitutions and national laws. STEINER & ALSTON, *supra* note 44, at 263.

47. MATTHEW C.R. CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* 9 (1995); Jeanne M. Woods, *Justiciable Social Rights as a Critique of the Liberal Paradigm*, 38 TEX. INT’L L.J. 763, 763–64 (“While the [UDHR] posits as fundamental both the traditional tenets of individual liberty and so-called second-generation rights, the social, economic, and cultural preconditions of a dignified human life remain marginalized in the dominant rights discourse.”).

48. The decision to adopt two separate treaties for civil and political versus economic, social, and cultural rights was heavily influenced by political factors. See CRAVEN, *supra* note 47, at 7 (“That it was decided to draft two separate treaties instead of a single composite instrument is largely a reflection of the perception developed during the drafting of the Covenants that the two categories of rights were different in nature, origin, and significance. These differences were considered such that it would not be practical, and certainly not politically acceptable, for a single treaty to be drafted containing all the rights found to be in the UDHR.”); MAGDALENA SEPÚLVEDA, *THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS* 117 (2003). For further discussion about the reasons behind the separation of the two sets of rights, see Philip Alston, *Economic and Social Rights*, in *HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY* 137–39 (Louis Henkin & John Lawrence Hargrove eds., 1994); KITTY ARAMBULO, *STRENGTHENING THE SUPERVISION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: THEORETICAL AND PROCEDURAL ASPECTS* 9–15 (1999); Chisanga Puta-Chekwe & Nora Flood, *From Division to Integration: Economic, Social and Cultural Rights as Basic Human Rights*, in *GIVING MEANING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS* 39–43 (Isfahan Merali & Valeri Oosterveld eds., 2001).

49. CESCR, General Comment No. 3: The Nature of States Parties’ Obligations, 5th Sess., ¶¶ 1–2, U.N. Doc. E/1991/23, Annex III (Nov. 26–Dec. 14, 1990) [hereinafter General Comment No. 3].

50. ICESCR, *supra* note 36, art. 2.

51. General Comment No. 3, *supra* note 49, ¶ 4.

52. *Id.* ¶ 2.

possible” towards realization.⁵³ The CESCR has further stated that there is a “minimum core” obligation on states to “ensure the satisfaction of, at the very least, minimum essential levels” of the rights,⁵⁴ the parameters of some of which have been delineated by the CESCR.⁵⁵

Even with financial limitations, therefore, Nepal, has obligations of immediate and continuous effect.⁵⁶ Moreover, Article 2 of the Covenant notes that steps should be taken “individually and through international assistance and co-operation.”⁵⁷ The CESCR has thus interpreted maximum available resources as including resources within a state and those available in the international community.⁵⁸ Nepal also has a duty to give effect, in good faith, to other human rights treaties to which it is a party.⁵⁹

C. Codified Discrimination

Nepal is an ethnically and linguistically diverse country⁶⁰ and despite advances in legislation in the latter half of the twentieth century, discrimination on the basis of caste, ethnicity, and gender has been codified for centuries. The place of individuals within the caste system in particular remains a strong predictor of one’s access to social and political access and power. The social

53. *Id.* ¶ 9.

54. General Comment No. 3, *supra* note 49, ¶ 10.

55. For example, with respect to the right to the highest attainable standard of health, core obligations include ensuring nondiscriminatory access to health facilities, goods and services; providing access to minimum essential food; access to basic shelter, housing, sanitation, and potable water; providing essential drugs; ensuring equitable distribution of health facilities, goods and services; adopting and implementing a national public health strategy and plan of action on the basis of epidemiological evidence which addresses the health concerns of the whole population. CESCR, General Comment No. 14, The Right to the Highest Attainable Standard of Health, ¶ 43(a)–(f), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter General Comment No. 14].

56. It can, however, determine the extent to which the economic rights in the Covenant should be extended to non-nationals. ICESCR, *supra* note 36, art. 2(3).

57. *Id.* art. 2(1).

58. General Comment No. 3, *supra* note 49, ¶ 13.

59. See Vienna Convention on the Law on Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331.

60. Over a third of Nepal’s population consists of ethnic minorities or indigenous peoples, and over 100 languages are spoken. See Harka Gurung, *Ethnic Demography of Nepal*, NEPAL FOUND. OF ADVANCED STUD. (Jan. 10, 1996), http://www.nepaldemocracy.org/ethnicity/ethnic_demography.htm; *Languages of Nepal*, NEPAL CHANNEL, <http://www.nepal.com/languages> (last visited Mar. 22, 2011).

hierarchy excluding low-caste Nepalis (especially Dalits) from birth, has historic and religious bases that formalizes discrimination and impacts a broad range of rights.⁶¹ While there are many similarities with the Indian caste system, in Nepal caste intersects with ethnicity and language to form a distinct scheme of power relations. There are variations throughout the country and among speakers of different languages,⁶² and internal hierarchies exist within the various castes, including the Dalit population, with some Dalit groups having a higher social status than others,⁶³ all resulting in a complex system of social relations.

Tribal peoples of Nepal, sometimes referred to as “indigenous,”⁶⁴ “groups of nationalities,”⁶⁵ or in Nepali, *Adivasi* or *Janajati* (or *Adivasi Janajati*),⁶⁶ occupy an intermediary position

61. The general four-caste structure of Brahmins (priests and teachers), Chetris (rulers and soldiers), Vaisyas (merchants and traders), and Dalits (the so-called “untouchable” caste of laborers, cobblers, and manual scavengers) varies depending on geographical location, and each caste within the four-caste framework has numerous subcategories, which are often tied to specific occupations. Generally, Nepali-speaking groups and Madheshis (people who speak North Indian dialects and live in the outer Terai, the Madhesh, near the border with India) practice some variation of the four-caste system. See JOHN WHELPTON, *A HISTORY OF NEPAL* 9–10 (2005); see also CHR.GJ, *THE MISSING PIECE OF THE PUZZLE, CASTE DISCRIMINATION AND THE CONFLICT IN NEPAL* 6–8 (2005), available at <http://www.chrgj.org/docs/Missing%20Piece%20of%20the%20Puzzle.pdf>.

62. WHELPTON, *supra* note 61, at 9–10.

63. Mary M. Cameron, *Transformations of Gender and Caste Divisions of Labor in Rural Nepal: Land, Hierarchy, and the Case of Untouchable Women*, 51 J. ANTHROPOLOGICAL RES. 215, 220 (1995).

64. See SUSAN HANGEN, *CREATING A “NEW NEPAL”: THE ETHNIC DIMENSION* 21 (2007). The use of the “indigenous” label has been contentious in Nepal, however, and there is considerable disagreement as to whether all tribal/*Janajati* groups may properly refer to themselves as Adivasi.

65. Alexandra Geiser, *Social Exclusion and Conflict Transformation in Nepal: Women, Dalits and Ethnic Groups* 29 (Swisspeace, Working Paper No. 5, 2005) (“[M]ost ethnic activists in Nepal prefer being referred to as ‘nationalities’ rather than ‘ethnic groups’. They believe they fulfill typical criteria of a nation, such as language, religion, culture, territory, and history.”).

66. HANGEN, *supra* note 64, at 19. The terminology used to refer to the tribal population is inconsistent and confusing. There is considerable slippage in the usage of the terms “tribal” and “indigenous” in literature referring to this population in Nepal. The terms “Adivasi” and “Janajati” are used by both the government and the populations themselves, and sometimes they are jointly called “Adivasi Janajati.” The use of the term *Janajati* became politicized in the 1990s, but before that, it simply meant “tribe” or “general public.” *Id.* As it became associated with the ethnic movement during *Jana Andolan*, it came to refer to “a community that is outside the fold of the Hindu caste system. . . . *Janajatis* are also held to share a common history of subjugation by the state.” *Id.* (internal citation omitted). The National Committee for Development

in the caste system. They are generally non-Hindu, non-Nepali speakers, and have distinct internal social structures. In many areas, however, the tribal groups fall into the caste system near the bottom of the hierarchy, though they occupy a higher position than Dalits.⁶⁷

The four-caste structure, with its multiple subdivisions, was codified by the 1854 national legal code, the *Muluki Ain*.⁶⁸ It dictated harsher punishments for lower-caste persons who contravened the law⁶⁹ and included numerous references to inter-caste and inter-community relations regarding marriage, sexual relations, and contact.⁷⁰ The code also institutionalized gender discrimination, particularly in the areas of property inheritance and family relations.

Prohibitions against discrimination on the grounds of religion, race, sex, or caste, have been codified in Nepali law since the 1950s, first appearing in the 1951 constitution—Nepal's second constitution.⁷¹ The provision there only covered discrimination by the state and not private actors and social discrimination. Protections grew stronger in each of the subsequent constitutions⁷² but remained far from

of Nationalities defines a *Janajati* group as that "which has its own mother tongue and traditional culture[,] exists outside the Hindu caste system, has its own "distinct collective identity . . . [t]raditional homeland or geographical area. . . [a] 'we-feeling, . . . [and] [w]ho declare themselves as Janajati." Dilli Ram Dahal, *Social Composition of the Population: Caste/Ethnicity and Religion in Nepal*, in 1 POPULATION MONOGRAPH OF NEPAL 87, 91 (2003).

67. See WHELPTON, *supra* note 61, at 9–10; Nancy E. Levine, *Caste, State, and Ethnic Boundaries in Nepal*, 46 J. OF ASIAN STUD. 71, 72 (1987); see also HANGEN, *supra* note 64, at 5.

68. See PERSPECTIVES ON MODERN SOUTH ASIA: A READER IN CULTURE, HISTORY, AND REPRESENTATION 104 (Kamala Visweswaran ed., 2011), See generally David N. Gellner, *Caste, Ethnicity and Inequality in Nepal*, 42 ECON. & POL. WKLY. 1823, 1823 (2007).

69. See Levine, *supra* note 67, at 72–73.

70. Rajendra Pradhan & Ava Shrestha, *Ethnic and Caste Diversity: Implications for Development* 5 (Asian Dev. Bank, Working Paper No. 4, 2005), available at <http://www.adb.org/Documents/Papers/NRM/wp4.pdf>.

71. Interim Gov't of Nepal Act, 1951, pt. II, art. 15(1) ("His Majesty's Government shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.")

72. See NEPAL CONST. (1990), pt. 3, art. 11; NEPAL CONST. (1962), pt. 3, art. 10; NEPAL CONST. (1959), pt. III, art. 4. Prohibitions against caste discrimination in national legislation also began to appear in the 1950s. See, e.g., Civil Rights Act, 1955, art. 4 (Nepal). However, many pieces of legislation remained discriminatory. In 2000, for example, one nongovernmental organization ("NGO") identified more than one

comprehensive. Moreover, numerous provisions in the law were also discriminatory, including restrictions on property inheritance; issues in employment, health, education, and family relations; and discriminatory citizenship laws that allow fathers, rather than mothers, to vest citizenship upon their children.⁷³ Movements opposing discrimination grew after the fall of the Rana regime, but during the *panchayat* ("partyless" democracy)⁷⁴ years affiliation along caste and ethnic lines was "discouraged" by the government as an impediment to development and nation building.⁷⁵ Only after *Jana Andolan* (the People's Movement)⁷⁶ and in the Constitution of 1990 was there multi-party democracy⁷⁷ that allowed for parties affiliated along political or caste and other lines. The 1990 Constitution was also much more inclusive than past documents; it explicitly prohibited discrimination on the basis of caste and gender;⁷⁸ Moreover, post-

hundred provisions in Nepali laws and regulations that had facially discriminatory provisions. Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 WASH. U. GLOBAL STUD. L. REV. 391, 402 (2003); see CHR[G], *supra* note 28, at 13–14.

73. Lynn Bennett, *Gender, Caste and Ethnic Exclusion in Nepal: Following the Policy Process from Analysis to Action* 31 (2005), available at <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Bennett.rev.pdf>. See generally CHR[G], *supra* note 28 (analyzing proposed provisions to Nepali laws regarding human rights obligations).

74. WHELP[TON], *supra* note 61, at 86. Following the collapse of the Rana regime in 1951, the royal family again emerged as the dominant political force in Nepal. *Id.* at 86–87. Following a brief experiment with parliamentary elections in 1959, King Mahendra dissolved parliament and took control of the state "clothed in the rhetoric of 'partyless Panchayat democracy,'" which remained largely in effect through political turmoil in Nepal until popular protests in 1990. *Id.* "Panchayat" is the Nepali word for "council of five," one of the elected bodies created by the 1962 constitution, set up at different levels of government. *Id.* at 264.

75. See Gellner, *supra* note 68, at 1824; see also Bennett, *supra* note 73, at 7; Pradhan & Shrestha, *supra* note 70, at 7.

76. WHELP[TON], *supra* note 61, at 261. The 1990 People's Movement brought an end to absolute monarchy and the *panchayat* system, instituting constitutional democracy. *Id.* at 114–15.

77. NEPAL CONST. (1990), pmbl., art. 113.

78. *Id.* art. 11(2). However, the constitution's own provisions remained discriminatory. For example, women could not pass citizenship onto their children. *Id.* art. 9(1); see also Bennett, *supra* note 73, at 31. Moreover, discrimination on the basis of caste for religious regions could still take place. NEPAL CONST. (1990), art. 19(1) ("Every person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices . . ."). For a deeper discussion of the anti-discrimination in the current and past constitutions of Nepal, see generally Wickeri, *supra* note 28.

1990, courts were more active in striking down discriminatory laws and provisions.⁷⁹

The 2007 Interim Constitution, currently in force,⁸⁰ provides the strongest protections against discrimination to date, but it still falls short of Nepal's obligations under international law. It prohibits discrimination on the basis of religion, race, gender, caste, tribe, origin, language or ideological conviction,⁸¹ and there are several proactive provisions protecting women's rights. These include provisions protecting reproductive health rights,⁸² equal inheritance rights for sons and daughters,⁸³ and the "right to social justice" for vulnerable populations (women, Dalits, tribal peoples, and peasants), which involves the right to "participate in the state mechanism on the basis of proportional inclusive principles."⁸⁴ Violence against women is also prohibited.⁸⁵ Despite the strength of these articles in comparison with previous versions of the constitution, the protections could be made more robust.⁸⁶

D. *Land and Property in Nepali Law*⁸⁷

1. The Traditional Legal Framework: State Landlordism

a. Overview of the *Raikar* System

Until the mid-1900s, Nepal operated under a centuries-old land tenure system characterized by state ownership, a powerful

79. See Charles J. Ogletree Jr. & Rangita de Silva-de Alwis, *The Recently Revised Marriage Law of China: The Promise and the Reality*, 13 TEX. J. WOMEN & L. 251, 278 (2004) (stating that laws on marital rape were amended following a legal challenge by the Forum for Women, Law, and Development).

80. The final constitution has been delayed until May 2011. Utpal Parashar, *Solutions Aplenty to End Nepal PM Poll Deadlock*, HINDUSTAN TIMES (New Delhi), Nov. 4, 2010, <http://www.hindustantimes.com/Solutions-aplenty-to-end-Nepal-PM-poll-deadlock/Article1-622182.aspx>.

81. NEPAL INTERIM CONST. (2007), art. 13(2).

82. *Id.* art. 20(2).

83. *Id.* art. 20(4).

84. *Id.* art. 21.

85. *Id.* art. 20(3).

86. Protections for Dalits improve upon previous constitutions in the realm of anti-discrimination and the right against "untouchability," but can be expanded and clarified to ensure compliance with international law. CHRGJ, *supra* note 28, at 2–10.

87. The research and analysis in this section is drawn from an earlier article by this author in Wickeri, *supra* note 28.

landed elite, and limited peasants' rights.⁸⁸ Despite attempted reforms throughout the second half of the twentieth century,⁸⁹ the system remained largely unchanged and the impact of its state-centric structure can still be seen in today's framework.⁹⁰ The traditional framework was characterized by expansive state authority and limited rights for individuals.⁹¹ Moreover, because the Shah monarchy and Rana dynasty⁹² generally conferred land grants to the royal family, government functionaries, and their families and associates as a means of ensuring loyalty, generations of Nepalis who were not related to the royal family or working in high-ranking positions for the state were almost completely excluded from land ownership.⁹³ Because so much of the traditional system plays a role in modern land tenure in Nepal,⁹⁴ an overview of that framework is necessary.

The traditional system encompassed two primary tenure systems: state landlordism, known as *Raikar*, whereby the state owned all land and exclusively retained the right of alienation through sale, mortgage, or bequest;⁹⁵ and *Kipat*, a form of communal land ownership whereby "traditional concepts of customary rights in the land" applied.⁹⁶ After unification in 1768, most land was organized under *Raikar* tenure, meaning that

88. See REGMI, *supra* note 21, at 16, 197; WILY ET AL., *supra* note 26, at 82. A shortened version of this analysis of Nepal's legal framework relating to land ownership was previously included in Wickeri, *supra* note 28.

89. See *infra* Part I.D.ii.

90. See WILY ET AL., *supra* note 26, at xv, 82. Wily notes that, despite the introduction of land ceilings and subsequent reforms lowering the land ceilings, land distribution remains skewed in much the same way as it was in 1950. *Id.* at xiii.

91. REGMI, *supra* note 21, at 15–17, 170–71; SHANKER THAPA, HISTORICAL STUDY OF AGRARIAN RELATIONS IN NEPAL (1846–1951) 162–63 (2000).

92. The Shah dynasty ruled Nepal from the country's unification in 1768 until the establishment of the republic in 2008. However, between 1846 and 1953, the Rana family was the dominant ruling party, holding the position of Prime Minister and other government positions hereditarily. This reduced the Shah royals to mere figureheads. WHELPTON, *supra* note 61, at 1.

93. BASNET, *supra* note 23, at 10; REGMI, *supra* note 21, at 16–19.

94. See REGMI, *supra* note 21, at 170.

95. *Id.* at 16.

96. *Id.* at 19. The tradition of *Kipat* dates back to pre-unification Nepal, when the area now known as Nepal consisted of a number of principalities, each with their own political, economic, social, and cultural systems. TULSEY RAM PANDEY ET AL., UNESCO, FORMS AND PATTERNS OF SOCIAL DISCRIMINATION IN NEPAL 33 (2006). This system was generally limited to communities in the Eastern and Western hill areas of Nepal, and owners derived their rights in land by virtue of membership in a particular ethnic group. REGMI, *supra* note 21, at 20.

ownership of land vested with the state and could only be relinquished upon state initiative through sale, mortgage, or usage grants to individuals or organizations.⁹⁷ Even then, with one exception, such land grants were subject to state resumption or confiscation.⁹⁸ Absent a grant, private individuals who lived and farmed on *Raikar* land were tenants of the state, paying annual land taxes in exchange for the right to cultivate the land.⁹⁹ *Raikar* tenure operated through three sub-systems: *Birta* (grants to upper classes that consolidated their wealth and power), *Guthi* (grants to religious or charitable institutions), and *Jagir* (grants in consideration for services for state employees).¹⁰⁰ The different forms of *Raikar* tenure thus consolidated both economic and political power in the hands of a small group of landowners and helped to solidify class determinations, by which nonagriculturalists were given control of the land at the cost of the agrarian class.¹⁰¹

There were few changes to the *Raikar* framework for almost two centuries because it was such an effective means of both ensuring loyalty and increasing tax revenue¹⁰² for a newly-unified country that had limited assets and power as compared to its two larger neighbours. The distribution of land grants to the ruling class increased as time went on,¹⁰³ creating a growing class of “nonfarmer elites.”¹⁰⁴ By 1950, nearly a third of all land existed as *Birta* grants.¹⁰⁵

The Rana regime bolstered the system through absentee landlordism, intermediaries, arbitrary evictions, and revenue contractors, all of which kept the peasant class dependent while exploiting agricultural resources.¹⁰⁶ Taxation was also expanded

97. REGMI, *supra* note 21, at 16; see PANDEY ET AL., *supra* note 96, at 33–34.

98. REGMI, *supra* note 21, at 17.

99. THAPA, *supra* note 91, at 165.

100. REGMI, *supra* note 21, at 16–18.

101. *Id.* at 17.

102. CSRC, *supra* note 23, at 6.

103. WILY ET AL., *supra* note 27, at 86.

104. CSRC, *supra* note 23, at 10.

105. Jagat Basnet, *Land Reform and Exclusion of Poor People*, in NEPAL: TRANSITION TO TRANSFORMATION 143 (Kailash Nath Pyakuryal et al. eds., 2008), available at [http://www.nccr-north-south.unibe.ch/publications/Infosystem/On-line%20Dokumente/Upload/Pages%20from%20Pyakuryal_Upreti_Sharma_Nepal_Transition_NCCR_North_South_2008\(2\).pdf](http://www.nccr-north-south.unibe.ch/publications/Infosystem/On-line%20Dokumente/Upload/Pages%20from%20Pyakuryal_Upreti_Sharma_Nepal_Transition_NCCR_North_South_2008(2).pdf).

106. THAPA, *supra* note 91, at 162.

by appointing members of the nobility and their allies to serve as tax collectors¹⁰⁷ creating a class of "land collectors" who charged rates higher than those fixed by the government, becoming rich off the profits and securing control over arable land.¹⁰⁸ Exploiting the raised prices, land collectors were then able to lend money to peasants at high interest rates, with the penalty of nonpayment being the confiscation of land.¹⁰⁹ In addition, under the *Kut* system (fixed rate tenancy), peasants had to provide half their gross produce to the landlord without exception, even when crops failed.¹¹⁰

b. Tenants Rights

Under *Raikar*, owner-landlords of *Raikar* grants, whether temporary or permanent, owned both the land and the peasants who worked the land,¹¹¹ who had limited rights to cultivate it.¹¹² In the resultant codependency, the privileged class depended on the peasants for agricultural production, and the peasants depended on the landowning elite for subsistence by allowing them to remain on the land.¹¹³ Some regional variations included systems that were even more exploitative.¹¹⁴ Although landlords were guaranteed a large share of the crops, sometimes as much as two-thirds of the main crop,¹¹⁵ they took no part in the production process.¹¹⁶ They did not provide seeds, fertilizer, or financial support.¹¹⁷ The entire process fell on the peasants, who

107. CSRC, *supra* note 22, at 4. These tax collectors were known as *Jamidars* in the Terai. *Id.*

108. Basnet, *supra* note 105, at 143.

109. *Id.* at 144.

110. THAPA, *supra* note 91, at 163.

111. REGMI, *supra* note 21, at 18.

112. *Id.* at 16. In some areas, the state honored traditional practices that allowed the tenant to transfer land for money. *Id.* at 172-73.

113. THAPA, *supra* note 91, at 162.

114. Under the *Raibandi* system in the central and eastern midlands, for example, cultivators were not guaranteed the right to farm the same holding permanently. WILY ET AL., *supra* note 26, at 171-72. Rather, the state could redistribute available rice lands in any given village according to family size. This allowed a peasant to acquire subsistence holding through the redistribution of the bigger holdings of neighbors because families whose holdings exceeded the per capita share had to relinquish their excess share without compensation. However, these lands could still be redistributed later.

115. WILY ET AL., *supra* note 26, at 94.

116. THAPA, *supra* note 91, at 162.

117. *Id.*

were responsible for cultivation expenses in addition to the taxes, levies, and rent, and because landlords were tied to the rulers, peasant-tenants were left extremely vulnerable.¹¹⁸

The system enabled nonfarmers to gain control of considerable land holdings, entrenching the classist nature of landlordism and resulting in problematic relationships such as absentee landlordism, which continues to plague the country today,¹¹⁹ where landlords or their employees only contact their tenants at the time of rent collection.¹²⁰ The result was a distinct class-based system by which a select group was eligible for ownership rights, and the vast majority of Nepali, generally the working, farming class, were functionally excluded from such rights.¹²¹ Unsurprisingly, the resulting system, in addition to being deeply skewed in terms of landholdings, was also extremely discriminatory. More often than not, people in the lower castes, indigenous groups, and other ethnic minorities—not to mention women—were completely disenfranchised and left vulnerable to the more abusive aspects of the system, including bonded labor.

c. Bonded Labor

Under the traditional system, there were several distinct, if similar, systems of bonded labor.¹²² Groups of people—often low-caste or indigenous groups—were frequently brought under forms of debt bondage depending on where they lived: *Kamaiya* (overwhelmingly from the indigenous Tharu group, found in the far and midwestern regions of the Terai),¹²³ *Haliya* (primarily

118. *Id.*

119. WILY ET AL., *supra* note 26, at 65.

120. *Id.* at 65, 91–92.

121. *Id.* at 163.

122. The right to compel unpaid labor was vested in the state and conferred upon land grantees under *Birta*, *Guthi*, and *Jagir*. See REGMI, *supra* note 21, at 18. Bonded labor exists in numerous sectors in Nepali society, including the construction and manufacturing sectors. See WORLD ORGANIZATION AGAINST TORTURE [OMCT], ATTACKING THE ROOT CAUSES OF TORTURE: POVERTY, INEQUALITY AND VIOLENCE 168–74 (2006). For the purposes of this Report, the term “bonded labor” refers solely to the agricultural forms of bonded labor.

123. There are no current official statistics on the number of ex-*Kamaiya* households. Official government numbers collected in 2000 found approximately 19,863 *Kamaiya* households. SHIVA SHARMA ET AL., NEPAL: BONDED LABOUR AMONG CHILD WORKERS OF THE KAMAIYA SYSTEM: A RAPID ASSESSMENT 14 (2001). NGO estimates were as high as 116,000 in 1995. OMCT, *supra* note 122, at 168–74; see Sherab

Dalits, found in the western hill regions), and *Haruwa* (primarily Dalits, found in parts of the Terai).¹²⁴ Another system, known as *Rakam*, comprised unpaid labor compelled by the government for the performance of specific government-designated functions in the Kathmandu valley region.¹²⁵ Each of these arrangements were categorized by inherited debt bondage: loans are made to individuals or families in the form of cash or rent for lands that are then repaid over time by the debtors who live on the lands owned by their landlords. Debtors and their families are then compelled to repay their debts through agricultural labor and, in some cases, work in the homes of their landlords.¹²⁶ If bonded families were unable to meet their basic subsistence needs or incurred medical or other unexpected costs, they were forced to borrow more from their landlords, thereby extending their debts.¹²⁷

The class determinations reinforced by debt bondage were bolstered by absentee landlords, intermediaries,¹²⁸ arbitrary evictions,¹²⁹ and revenue contractors,¹³⁰ all of which kept the peasant class dependent while exploiting agricultural

Posel, Kamaiya: *Bonded Labor in Western Nepal*, 27 COLUM. HUM. RTS. L. REV. 123, 125 (1995).

124. See WILY ET AL., *supra* note 26 at 114, n.40; Jagat Deuja & Nari Ram Luhar, *Status of Haliyas in Nepal*, in LAND POLITICS AND CONFLICT IN NEPAL, *supra* note 21, at 199–200, (describing the difference in status between the Tharu *Kamaiya* and the Dalit *Haliya/Haruwa*). Another system, known as *Rakam*, was found primarily in the Kathmandu valley region, and was unpaid labor compelled by the government for the performance of specific government-designated functions (e.g., carpentry and bricklaying). REGMI, *supra* note 21, at 18–19. The state was able to impose *Rakam* on any of the tenure systems. *Id.*

125. CSRC, *supra* note 23, at 71.

126. Only *Kamaiya* laborers worked in the homes of their landlords, as Dalits, *Haruwa*, and *Haliya* were considered “untouchable” and were not allowed in the homes. See WILY ET AL., *supra* note 26 at 64. But see Suresh Dhakal, *Haruwa, The Unfree Agricultural Labourer: A Case Study from Eastern Tarai*, 34 CONTRIBUTIONS TO NEPALESE STUD. 277, 296–97 (2007) (highlighting various types of household chores that a *Haruwa* might be required to perform).

127. Purna Nepali & Kailash Nath Pyakuryal, *Land and Power Relations*, in LAND POLITICS AND CONFLICT IN NEPAL, *supra* note 21, at 85, 100; Deuja & Luhar, *supra* note 124, at 212; see Posel, *supra* note 123, at 130.

128. WILY ET AL., *supra* note 26, at 89, 91–92. Members of the nobility and their allies were appointed to serve as tax collectors (*Jimidars*) who were permitted to collect more than would be transferred to the state.

129. THAPA, *supra* note 91, at 160.

130. *Id.* at 162.

resources.¹³¹ Mass illiteracy and innumeracy among peasants (as well as discrimination) prevented upward mobility, and also heightened vulnerability to each of these factors.

Bonded labor was abolished by the 2002 Kamaiya Labor (Prohibition) Act, which also canceled the loans and freed individuals and families bonded under the *Haliya*, and *Haruwa* systems.¹³² The act also provided for the allotment of some lands to former bonded laborers.¹³³ Despite these prohibitions on paper, according to many of the individuals interviewed by the Leitner Center delegation, a part of these systems remain in exploitative relationships with their landlords.¹³⁴

2. Dismantling *Raikar*: Changes and Status Quo

a. Overview

Despite the benefits to the state and wealthy elite of bolstering the *Raikar* land tenure system, by the mid-twentieth century, the regime was forced to adopt some reforms amidst escalating tensions among tenant farmers.¹³⁵ The most significant

131. *See id.* at 162.

132. Bonded Labour (Prohibition) Act, 2002, pmbl., chs. 2–3 (Nepal). For a discussion of the *Haliya* and *Haruwa* systems, see WILY ET AL., *supra* note 26, at 64. The Nepali government's enforcement of the 2002 Act has proved unreliable, and social integration of the *Kamaiyas* has been difficult. *See Nepal*, U.S. DEP'T OF STATE (2008), <http://www.state.gov/g/drl/rls/hrrpt/2007/100618.htm> ("By 2004, 12,019 Kamaiyas reportedly had received land, 7,149 families had received approximately [US]\$143 (10,000 rupees) for building homes, and approximately 3,000 had received timber to build houses. The government set up temporary camps for approximately 14,000 other Kamaiyas awaiting settlement.").

133. Nepal's 2007 Interim Constitution also outlawed slavery. *See NEPAL INTERIM CONST.* (2007), art. 29(3) ("No person shall be subjected to human trafficking, slavery or bonded labour."); Jagat Deuja et al., *Haruwas and Charuwas in Tarai*, in *LAND POLITICS AND CONFLICT IN NEPAL*, *supra* note 21, at 213; *see also* Dr. Baburam Bhattarai, Finance Minister, Budget Speech of Fiscal Year 2008–09, Address before Legislature-Parliament (Sept. 19, 2008), *available at* http://www.bhaktapuronline.com/BOL-budgetspeech_english.pdf ("Rehabilitation of all registered family of bonded labor will be accomplished within the next fiscal year. I have allocated necessary budget to give continuity to programs such as bonded labour entrepreneurship development, skill development, model vegetable farming and land exchange and adjustment program that directly benefits such groups.").

134. *See infra* Part II.D; *see also* OMCT, *supra* note 122, at 168–74; Dhakal, *supra* note 126, at 4–6.

135. *See* WILY ET AL., *supra* note 26, at 92–93, 100–09 (providing a comprehensive history of the reforms); Wickeri, *supra* note 28, at 429–31 (discussing the link between rising levels of conflict and subsequent land reforms).

and progressive change arrived with the 1964 Land Reform Act ("1964 Act").¹³⁶ The act, which enacted vast, if not always beneficial, changes to the land tenure framework, was amended eleven times (most recently in 2010), and remains the primary law governing land rights in Nepal today.¹³⁷

The language of the act in particular embraced some of the socialist rhetoric of the political movements of the day, declaring one of the aims to be "equitable distribution of cultivable land."¹³⁸ To this end, much of the act focused on regulating ownership rights and offering tenant protections. The act imposed ceilings on land holdings,¹³⁹ fixed rents to the landowner at 50% of the principal crops,¹⁴⁰ abolished intermediary tax collectors (the *jimidari* system),¹⁴¹ strengthened tenant protections,¹⁴² and introduced measures such as a "Compulsory Savings Scheme" to generate capital for investment in rural areas.¹⁴³ Individuals asserted their rights after showing authorities a land certificate.

b. Emergence of Private Property Rights

Even before 1964, private property rights for *Raikar* holders had begun to emerge. Between 1854 and 1868, in an effort to regulate taxation,¹⁴⁴ the regime began to register rights-holders, landholdings, and payments due thereon; these records were subsequently used as "the ultimate evidence of land-holding

136. Lands Act, 1964 (Nepal); see Rishi Raj Lumsalee, *Land Issues in Nepal* 2 (2002) (paper presented at the Regional Workshop on Land Issues in Asia, World Bank), available at <http://www.mlmupc.gov.kh/mlm> (search "presented at the Regional Workshop on Land Issues in Asia").

137. See Lands Act (the amendments made have been directly, in 1966, 1968, 1981, 1997, and 2002, and through the Administration of Justice Reforms Act, in 1986 and 1991, the Act Amending Some Nepal Acts, in 1999, the Amending Some Nepal Acts to Maintain Gender Equality Act, in 2006, and the Republic Strengthening and Some Nepal Laws Amendment Act, in 2010); see also WILY ET AL., *supra* note 26, at 99.

138. Lands Act, pmbl.

139. Ceilings for land ownership differed by region. In the Terai, where agricultural land is concentrated, the land ceiling was set at twenty-five *bighas* (one *bigha* is approximately 1.6 acres). See *id.* ch. III(7).

140. See *id.* ch. VIII(33).

141. See *id.* ch. II(3).

142. See *id.* ch. VII(25).

143. See WILY ET AL., *supra* note 26, at 99, 103.

144. See *id.* at 91, 93.

rights.”¹⁴⁵ A 1921 law codified these rights, effectively making land a commodity.¹⁴⁶

The Nepali Congress Party, who helped usher in political change in 1951 after the fall of the Rana regime, brought land issues to the fore by demanding the redistribution of land to the tiller.¹⁴⁷ As such, property rights were included in the 1951 constitution for the first time¹⁴⁸ and over the next decade reforms continued along the suggestions of a government land commission, including the abolition of the *jimidari* system in 1964,¹⁴⁹ of the *Jagir* system in 1953, and of the *Rakam* system in the 1951 interim constitution.¹⁵⁰ An earlier 1957 Lands Act endowed *Raikar* landholders with “landowner” status, prohibited arbitrary evictions, required formal tenancy contracts and receipts for rent paid, and capped rent at 50% of the crop share.¹⁵¹ The 1959 Birta Abolition Act cancelled all *Birta* rights, making them subject to normal taxation; reverted all *Birta* forest and uncultivated land to the state; and prohibited unpaid labor and payments in forms other than agricultural rents in cash or in kind.¹⁵² Despite these proactive and protective reforms, however, many were not implemented in any meaningful way.

Because the system was not otherwise reformed, private property rights served to further entrench disparities between landholding elites and peasants, who were still excluded from owning land. Tenant rights were largely held out of the debate, and oppressive conditions continued untreated.¹⁵³ Landlords who held large tracts of land suddenly had lawful ownership over them whereas the majority of people held either very small plots or no land,¹⁵⁴ and poor tenants lost rights in the land they

145. REGMI, *supra* note 21, at 174–77; see WILY ET AL. *supra* note 26, at 91.

146. An Order Regarding Registration of Land Transactions, 1921 (Nepal). See WILY ET AL., *supra* note 26, at 91; see also REGMI, *supra* note 21, at 176–77.

147. See WILY ET AL., *supra* note 26, at 98.

148. See Interim Government of Nepal Act, 1951, pt. III, art. 17(2)(f). The 2007 Interim Constitution also protects private property. See NEPAL INTERIM CONST. (2007), art. 19.

149. See Lands Act, 1964, ch. II (Nepal).

150. See WILY ET AL., *supra* note 26, at 101.

151. See *id.*

152. See *id.*

153. See *id.* at 98.

154. See REGMI, *supra* note 21, at 187.

tilled;¹⁵⁵ in fact, the tillers' rights or place within the framework was effectively ignored.¹⁵⁶ This problem was compounded by the fact that so many peasants lived in a state of indebtedness, brought on by exorbitant rents and *Kut* policies, and were living on the "margin of subsistence," let alone producing enough to buy land.¹⁵⁷ Those who had acquired title were often pressured into trading their land as collateral for a loan or to escape debt.¹⁵⁸ At the same time, the Rana regime effectively abolished remaining *Kipat* holdings by confiscating the communal lands and forests of indigenous communities and redistributing them as "private" property to the ruling class,¹⁵⁹ decimating traditional ethnic communities and taxing individuals for land they previously owned.¹⁶⁰

The potential for change that may otherwise have been symbolized by the 1957 Lands Act was in any case short-lived due to poor implementation and lack of political will.¹⁶¹ Moreover, the Nepali Congress Party increasingly ran into confrontations with the king about the best way to address land concerns, the former calling for redistribution of land to the tiller, while the latter insisted on privatization aimed at increasing production.¹⁶² The election of the NCP in 1959 seemed to signify a victory for the tiller, as demonstrated in NCP leader Koirala's victory speech: "It is the tillers alone that must own the land."¹⁶³ Four days later King Mahendra dismissed the Congress and jailed Koirala.¹⁶⁴

155. *See id.* at 188.

156. *See WILY ET AL.*, *supra* note 26, at 114, 117–18.

157. REGMI, *supra* note 21, at 188–89.

158. *See id.* at 190.

159. PARSHURAM TAMANG & BIJAY KUMAR SINGH, AN ASSESSMENT OF THE IMPLEMENTATION OF THE NEPALESE GOVERNMENT'S INTERNATIONAL COMMITMENTS ON TRADITIONAL FOREST RELATED KNOWLEDGE (TFRK) FROM THE PERSPECTIVE OF INDIGENOUS PEOPLES 9 (2004).

160. *See PANDEY ET AL.*, *supra* note 96, § 3.3.3.

161. *See REGMI*, *supra* note 21, at 198; WILY ET AL., *supra* note 26, at 114–16.

162. *See WILY ET AL.*, *supra* note 26, at 98.

163. *Id.* (citation omitted).

164. *See id.*

c. Land Ceilings

Although the 1964 Land Reform Act declared one of its purposes to be “equitable distribution of cultivable land,”¹⁶⁵ another was the diversion of “inactive capital and pressure of population to other sectors of the economy in order to accelerate the pace of economic development of the country.”¹⁶⁶ In this way, land reform and the attendant steps of enforcing tenant rights, controlling rents and interest rates, and imposing ceilings on landholdings, were secondary to the overall goal of industrial development.¹⁶⁷ Thus, while the act sought to mitigate a few of the most abhorrent features of the traditional system, it ultimately did little to change the existing property relations among the different classes.¹⁶⁸

Land redistribution itself was neither well conceived nor well executed especially with respect to the acquisition of land through the lowering of land ceilings. The result was that “[l]and acquired for distribution accounted for only a fraction of the area anticipated.”¹⁶⁹ Lag time in implementation allowed big landholders enough time to transfer holdings to family members to avoid violating the cap.¹⁷⁰ Lack of monitoring thus led to illegal appropriation of land through fraudulent titling practices.¹⁷¹ Meanwhile, excess land was designated to authorities, to whom the tillers had to appeal to acquire the land. Most acquired but undistributed land remained in the hands of the owners, sometimes for as long as fifteen to twenty years.¹⁷² A commission was established in 1971 to investigate corruption and abuse of the ceiling caps, but no action came of it.¹⁷³

The final amendment to the 1964 Act was in 2001. It lowered land ceilings; provided that 50% of the land or the

165. Lands Act, 1964, pmb. (Nepal).

166. *Id.*

167. REGMI, *supra* note 21, at 199.

168. *Id.* at 213.

169. Ravi Bhandari, *Searching for a Weapon of Mass Production: Can Market-Assisted Land Reforms Live Up to Their Promise?*, 22 J. DEVELOPING SOC'YS 111, 116 (2006).

170. See Lumsalee, *supra* note 136, at 2; see also Bhandari, *supra* note 169, at 116.

171. *C.f.* Bhandari, *supra* note 169, at 26 (“Widespread complaints were also voiced that the intended beneficiaries did not receive the redistributed land, and ‘they seem to be substantiated by the fact that high-powered official commissions were appointed to probe into such irregularities in late 1971.’” (quoting REGMI, *supra* note 21, at 202)).

172. *Id.*

173. WILY ET AL., *supra* note 26, at 104.

equivalent value should go to the registered tenant; and regulated rent not to exceed 50% of the main crop.¹⁷⁴ The lowered ceilings have not been applied.¹⁷⁵

d. Rights and Registration and “Invisible Landlessness”

The tenancy protections in the 1964 Land Reform Act were both revolutionary and ineffectual. The act defined a tenant as any “peasant who obtains land belonging to any landowner for cultivation . . . with his personal labour, or with that of his family”¹⁷⁶ and, in 2001, allowed for certification of tenants through a registration process and formal rights in half the land.¹⁷⁷ This plan assumed that those without land knew of the act, understood it, and could access the authorities to exercise rights under it—all relatively extreme assumptions for the largely uneducated and illiterate peasant class whose landlords had little incentive to inform them of their rights.¹⁷⁸ Of the approximately two million applicants under the act in 1964, only 318,596 were ever actually registered as tenants.¹⁷⁹ Those who failed to register, including illiterate or uninformed tenants, lost any potential rights.¹⁸⁰ Moreover, no efforts were made to register tenants after the initial identification drive in 1964.¹⁸¹ For those who were registered, rights in land could not be transferred so that land could not be used as collateral.¹⁸² Further, by defining tenancy and creating a (small) class of “registered” tenants, the act, which made no mention of the landless population, effectively excluded any upward mobility for those not registered, leaving them essentially rights-less.¹⁸³

174. *Id.* at 107.

175. *Id.*

176. Lands Act, 1964, ch. I, ¶ 2(b) (Nepal).

177. *See id.* art. 26(b); *see also* WILY ET AL., *supra* note 26, at 103; Lumsalee, *supra* note 136, at 4.

178. Laya Prasad Uprety et al., Action Aid International, *People-Centered Advocacy for Land Tenancy Rights in Nepal: A Case Study of the Community Self-Reliance Centre's Grassroots Campaign 4–5* (Action Aid Int'l, Advocacy Action Research Project, Working Paper No.6, 2005).

179. LAND WATCH ASIA, ASSERTING FREEDOM FROM CENTRAL CONTROL 113 (2008), available at http://www.angoc.ngo.ph/pdffiles/SRL_Nepal.pdf.

180. *Id.* The Ministry of Agriculture estimated that approximately 40% of tenants were left out of this process. *See* Bhandari, *supra* note 169, at 119.

181. Bhandari, *supra* note 169, at 120.

182. *Id.* at 121.

183. *Id.*

Even these limited tenancy rights for registered tenants were outright prohibited for farmers of *Guthi* land.¹⁸⁴ In 1972, the *Guthi* Corporation Act attempted to bring *Guthi* holdings in line with the tenancy protections conferred by the 1964 Act,¹⁸⁵ but poor implementation and lack of monitoring undermined any significant changes to the *Guthi* system, which continues to be abused to avoid land taxes, ceiling caps, and minimum tenancy protections.¹⁸⁶ The 1977 Land Acquisition Act ("1977 Act") aimed to uphold the right to compensation in the case of state confiscation of land, including a percentage guarantee to the tenant; however, "no uniform system for compensation [existed,] allowing for manipulation" of the remunerations.¹⁸⁷ The 1977 Act further did not provide any recourse for unregistered occupants.

Moreover, due to the provision granting one-fourth of the cultivated land to the tenant, the 1964 Land Reform Act resulted in some unforeseen and novel land discrepancies, notably, "dual ownership."¹⁸⁸ The resultant competing rights to the land have subsequently caused an array of problems including the unwillingness of tenants and owners to invest in the land due to conflicting claims of title; the rise of informal tenancies and the driving of tenancy "underground" to avoid having to confer title; and the increase in the use of immigrants, mostly from India, to till the land in order to avoid having to comply with tenancy regulations.¹⁸⁹ A 2001 amendment to the 1964 Land Reform Act provided a tenant formal ownership rights to 50% of the land tilled.¹⁹⁰ Although the provision benefited many Nepalis who registered at the time, there was little effort to educate people; thus most had never heard about the provision.¹⁹¹ In the

184. See Lands Act (1964) ch. VII.25(3) (Nepal); Upreti et al., *supra* note 178, at 5.

185. See *Guthi Corporation Act*, 1976, chs. III–VII (Nepal); see also WILY ET AL., *supra* note 26, at 104.

186. See WILY ET AL., *supra* note 26, at 112–13.

187. WILY ET AL., *supra* note 26, at 105. The tenant received 25% of the compensation owed to the owner. *Id.*

188. Bhandari, *supra* note 169, at 122; Lumsalee, *supra* note 136, at 4.

189. Bhandari, *supra* note 169, at 122, 124.

190. WILY ET AL., *supra* note 26, at 107.

191. *Id.*; CSRC, *supra* note 22, at 6; CSRC, *supra* note 23, at 5, 17, 21, 23, 33, 55.

meantime, landlords now know to replace longstanding tenants in order to avoid their registration and attendant rights.¹⁹²

e. Tenure Security

The 1964 Act outlawed arbitrary evictions, but its broad exceptions, including the right to forcibly evict a tenant if the landowner submitted a request to use the land for residential, as opposed to agricultural, purposes,¹⁹³ led to widespread evictions.¹⁹⁴ Tenants were permitted to file complaints, but these had to be in writing,¹⁹⁵ another obstacle for the largely illiterate peasant class.

f. Indigenous Rights in Land

Kipat holdings had been effectively abolished prior to 1951, thereby confiscating the lands of indigenous communities.¹⁹⁶ A 1967 Amendment formally converted remaining *Kipat* holdings into *Raikar* holdings.¹⁹⁷ Similarly, the 1974 Nationalization of Grazing Lands Act converted all pastures, registered or not, to the government, further undermining indigenous systems of pasture management.¹⁹⁸ Combined with the 1957 Private Forest Nationalization Act, the Grazing Act had the effect of allowing indigenous peoples to access, but not own, forests and pastures.¹⁹⁹ In 1993, this framework was solidified under the Forest Act, which asserted that forests were state property whose management and use could only be granted to citizens via the state.²⁰⁰

192. See WILY ET AL., *supra* note 26, at 61; *c.f.* Interview with Gaya Prasad Chaudhary, Resident, Mashuriya Village, in Peharani Village Development Community [VDC], Nepal (May 14, 2009) (“[My relationship with my landlord was] good until I asked for a grain receipt and then he told me I had to leave.”).

193. Lands Act, 1964, ch.VII. 27 (Nepal).

194. Bhandari, *supra* note 169, at 137 n.9.

195. See Lands Rules, 1983, ch. II(7) (Nepal). The Land Rules were promulgated by the King in accordance with the Lands Act.

196. TAMANG & SINGH, *supra* note 159, at 8–9.

197. WILY ET AL., *supra* note 26, at 104. Wily estimates that *Kipat* land accounted for about 4% of all cultivated land in the 1950s. *Id.* at 92.

198. *Id.* at 105.

199. *Id.* at 111.

200. See Forest Act, 1993, ch.II(17) (Nepal); WILY ET AL., *supra* note 26, at 112.

E. *Land, Conflict, and the New Nepal*

1. Overview

As in other parts of the world,²⁰¹ land has historically been a source of conflict in Nepal.²⁰² Of the numerous uprisings in twentieth century Nepal, many were organized around calls for land reform. During the *panchayat* years, these movements grew into minor insurgencies and led to sporadic violent struggles in which farmers were met with violent suppression from the government.²⁰³ The People's Movement (*Jana Andolan*) in 1990²⁰⁴ and the instatement of a multi-party constitutional democracy ushered in new hope for land reform, but this soon faded when it became clear that the promises would not be implemented.²⁰⁵ From 1996 to 2006 the Maoist insurgency, which led to the end of the world's last Hindu kingdom, was a conflict for control over land and resources. In the aftermath of the conflict, the Interim Constitution provides the most robust human rights protections to date in Nepal. Land reform remains on the agenda, but the highly politicized nature of the debate has thus far impeded any real change.

2. Land and Conflict

Exclusion from land and related socio-economic rights for large segments of society contributed to the escalation of conflict, especially beginning in the 1940s.²⁰⁶ Neither the Nepali Congress Party's short-lived victory and calls for land reform in 1959 nor the changes declared by the 1964 Land Reform Act did much to

201. In one study by the International Peace Academy, the authors assert that "[v]irtually every violent intra-state conflict in recent memory, from Cyprus to Darfur, has involved underlying disputes over housing, land or property. . . . If not addressed, such disputes carry the potential for further conflict, such as in South Africa, Zimbabwe or Namibia." Agnès Hurwitz et al., *Housing, Land, Property and Conflict Management: Identifying Policy Options for Rule of Law Programming 2* (Int'l Peace Academy, Working Paper No. 1, 2005), available at http://www.ipacademy.org/Programs/Research/ProgReseSecDev_Pub.htm.

202. Bishnu Raj Upreti, *Land as Source of Marginalization and Conflict in Nepal*, in LAND POLITICS AND CONFLICT IN NEPAL, *supra* note 21, at 1.

203. See CSRC, *supra* note 23, at 40–44.

204. See WHELPTON, *supra* note 61, at 113–17.

205. See CSRC, *supra* note 23, at 33–34.

206. For a closer examination of the link between exclusion from Nepal's resources and increasing conflict, see generally Wickeri, *supra* note 28.

alleviate these pressures.²⁰⁷ As a result, peasant movements in the twentieth century focused on unfair rent policies and exploitation, sometimes becoming violent²⁰⁸ and clashing with the government.²⁰⁹

In 1994, the Badal High-Level Land Reform Commission was established to review the land tenure system and make recommendations on how to end exploitation and maximize productivity.²¹⁰ The commission's report is still referenced by both land-rights activists and government actors as having produced the best recommendations for realistic and meaningful land reform in Nepal.²¹¹ These included tenants' rights protections, ownership rights for registered tenants, conversion of most *Guthi* land, liberation of bonded laborers, low land ceilings and the establishment of a land floor, and stronger oversight mechanisms.²¹² Although pieces of these recommendations were codified in Lands Act amendments, they ultimately did little to change the makeup of land ownership in Nepal due to lack of meaningful implementation.²¹³ Instability throughout the 1990s impeded implementation especially for vulnerable groups and minorities.²¹⁴ The Maoist movement's calls for rights to food, housing, land, and education therefore attracted rural people throughout Nepal who had for so long been excluded from social and economic power.

207. WILY ET AL., *supra* note 26, at 101–02.

208. CSRC, *supra* note 23, at 40–42.

209. *Id.*

210. Uprety et al., *supra* note 178, at 5.

211. The Executive Director of the CSRC, Jagat Basnet, and several Nepali government officials (Keshav Raj Kanel, Acting Secretary of Land Reform and Management until mid-2009, and Mirolam Giri, District Secretary of the Communist Party of Nepal (Unified Marxist-Leninist) (CPN-UML) in Rupandehi District) praised the findings and recommendations of the Commission. Interview with Jagat Basnet, Executive Dir., CSRC, in Kathmandu, Nepal (May 18, 2009); Interview with Mirolam Giri, Dist. Sec'y, CPN-UML, in Rupandehi Dist., Nepal (May 13, 2009); Interview with Keshav Raj Kanel, then-Acting Sec'y of Land Reform & Mgmt., in Kathmandu, Nepal (May 19, 2009).

212. WILY ET AL., *supra* note 26, at 118–19; Interview with Keshav Badal, Badal Comm'n Chair & CPN-UML Standing Comm. Member, in Kathmandu, Nepal (May 18, 2009).

213. Interview with Keshav Badal, *supra* note 212; see CSRC, *supra* note 23, at 44.

214. See WHELPTON, *supra* note 61, at 202–07.

The 40-point Charter of Demands²¹⁵ issued by the Maoist Party right before it launched an armed conflict criticized the government for prioritizing “privatisation and liberalisation” even at the expense of Nepal’s poor.²¹⁶ Significantly, the memorandum states, “Land should . . . belong to ‘tenants.’ Land under the control of the feudal system should be confiscated and distributed to the landless and the homeless.”²¹⁷

The “people’s war” began in mid-February 1996.²¹⁸ The conflict was not simply an effort to redistribute wealth—and Maoists also demanded a secular republican state and a new constitution²¹⁹—but attacks were frequently levied against landlords and other powerful social actors. In 2005, Pushpa Kamal Dahal (or simply Prachanda (“the fierce one”)), who led the Unified Communist Party of Nepal (Maoist) (“CPN (Maoist)”, characterized the revolution as “basically . . . agrarian.”²²⁰ In the Terai²²¹ Maoists seized and redistributed land; in the hill districts, where landholdings were smaller, they aimed to “develop collective farming and revolutionize the production relations.”²²² The attacks were usually violent and included bombings, beatings, and killings,²²³ leaving people homeless and unable to return to their property or villages.²²⁴ Tens of thousands of people, both landlords and more often ordinary

215. *Memorandum from UNPF to the Prime Minister of Nepal*, reprinted in ALI RIAZ & SUBHO BASU, *PARADISE LOST? STATE FAILURE IN NEPAL* app. 2 (2007).

216. *Id.* at 186.

217. *Id.* at 188.

218. HUMAN RIGHTS WATCH, *BETWEEN A ROCK AND A HARD PLACE: CIVILIANS STRUGGLE TO SURVIVE IN NEPAL’S CIVIL WAR* 9 (2004).

219. *Id.* at 11.

220. ONESTO, *supra* note 33, at 67.

221. The Terai is the most fertile region in Nepal, with 55.7% of the country’s arable land. The Terai is therefore extremely desirable economically, and, as such, many land-related conflicts are centered there. See MINISTRY OF FORESTS AND SOIL CONSERVATION, *NEPAL BIODIVERSITY STRATEGY* 8 (2002) (Nepal), available at <http://www.ansab.org/UserFiles/Nepal%20Biodiversity%20Strategy%202002.pdf>.

222. ONESTO, *supra* note 33, at 67.

223. *Id.* at 69–73.

224. Gopal Sharma, *Maoists Fail to Return Seized Property*, REUTERS, Dec. 16, 2008, <http://in.reuters.com/assets/print?aid=INIndia-37053420081216>; see *Former Maoist Rebels Causing Trouble*, IRIN, Dec. 24, 2008, <http://www.irinnews.org/PrintReport.aspx?ReportID=82081>. The Maoists also evicted, abducted, and caused the “disappearances” of thousands of people it regarded as enemies to their cause. HUMAN RIGHTS WATCH, *supra* note 218, at 2.

tenants, were terrorized and displaced as a result of the conflict.²²⁵

3. Transition and Nepal's New Constitution

The ten-year conflict had a huge impact on Nepal's land and its people.²²⁶ Human rights violations were numerous, ranging from arbitrary killings, detentions, and rapes, to torture and disappearances. Physical destruction disrupted infrastructure throughout the country, making everyday life difficult even after the conflict had ended.²²⁷

A Comprehensive Peace Accord ("CPA") between the government and the Maoists was finally reached in 2006 and provided for Maoist inclusion in the government.²²⁸ Both the CPA and the 2007 Interim Constitution reference efforts to engage in land reform and equitable redistribution.²²⁹ But after over four years, the issue of returning seized land and property remains a highly-charged and politically sensitive topic.²³⁰ The

225. RURAL RECONSTRUCTION NEPAL & CTR. FOR INT'L STUDIES & COOPERATION, DEVELOPMENT STRATEGIES FOR A NEW NEPAL: A NATIONAL DEBATE 61 (2007).

226. For example, the Informal Sector Service Centre ("INSEC"), a nongovernmental organization based in Kathmandu, recorded the deaths of 2381 agricultural workers during the conflict (out of a total of 13,347 confirmed deaths). INSEC, *No. of Victims Killed by State and Maoist in Connection with the "People's War,"* <http://www.insec.org.np/pics/1247467500.pdf>. In addition to the deaths of agricultural workers, agricultural production slowed because people were unable or unwilling to maintain or improve farmland because of insecurity during the conflict. David Seddon & Karim Hussein, *The Consequences of Conflict: Livelihoods and Development in Nepal* 22 (Overseas Dev. Inst., Working Paper No. 185, 2002), available at <http://www.odi.org.uk/resources/download/1992.pdf>. Approximately 40% of the country's GDP is derived from agriculture. See *supra* note 21 and accompanying text.

227. ECOSOC, CESCR, Consideration of Reports Submitted by States Parties under Article 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic Social and Cultural Rights: Nepal, ¶ 10 U.N. Doc. E/C.12/1/Add.66 (Sept. 24, 2001).

228. CPA, *supra* note 8, pmb., ¶ 1.1.

229. See CPA, *supra* note 8, ¶ 3.7, 3.10.

230. See Interview with Carla Fajardo, Employee, Int'l Ctr. for Transitional Justice, in Kathmandu, Nepal (May 21, 2009); Interview with Dip Magar, Member, Office of the High Comm'r on Human Rights [OHCHR], in Kathmandu, Nepal (May 21, 2009); Interview with Mirolam Giri, *supra* note 211; Interview with Ram Chandra Dhaltal, Rupandehi District Chair, Nepali Congress Party, in Butawal, Rupandehi District, Nepal (May 13, 2009); Interview with Yagya Pakhore, Rupandehi District Chair, United Communist Party of Nepal-Maoists, in Butawal, Rupandehi District, Nepal (May 13, 2009); Interview with Lakshaman Prasad Ghimire, Chief Whip, Nepali Congress Party, Kathmandu, Nepal (May 18, 2009); Interview with Keshav Badal, *supra* note 212;

CPA and Interim Constitution provisions that urge redistribution appear to conflict with other provisions in the same documents that provide for the return of seized property.²³¹ This inconsistency is the product of a political compromise between the Maoists and a government in search of peace that nonetheless leaves land policy in Nepal difficult to pin down.²³² Half-hearted attempts to return land to pre-1995 owners have in some cases not been implemented on the ground and in others, communities to whom land was “redistributed” by the Maoists now charge they have been betrayed and oppose government attempts to move them.²³³ In many cases, ongoing instability, especially in the eastern Terai, means that landlords are fearful to return,²³⁴ and weak political will in Kathmandu means that much of the land remains with its post-conflict tenants.²³⁵ Civil-society actors charge that the deadlock between the Nepali Congress (who demand the return of land) and the Maoists (who use land restitution as leverage for the release of Maoist fighters from camps) is likely to remain for some time.²³⁶

The 2007 Interim Constitution is the sixth constitution Nepal has drafted since one was first adopted in 1948.²³⁷ Hopes for a post-conflict, republic constitution were extremely high. The Interim Constitution was not the first to include provisions protecting human rights,²³⁸ but its protections are the most robust. Substantive protections in Part 3 of the constitution protect both civil and political and socio-economic rights and its

Interview with Purna Kumari Subedi, Vice Chair, Nepal Constitutional Assembly (May 19, 2009); Interview with Keshav Raj Kanel, *supra* note 211.

231. CPA, *supra* note 34, arts. 3.7, 3.10; NEPAL INTERIM CONST. (2007), art 33, ¶d–f, h(i).

232. Interview with UNDP, in Kathmandu, Nepal (May, 19, 2009).

233. Interviews with Community Members, in Nawalparasi District, Nepal (May 14, 2009).

234. See *Former Maoist Rebels Causing Trouble*, *supra* note 224.

235. CSRC, *supra* note 23, at 49.

236. See, e.g., *id.* at 20; Interview with Carla Fajardo, *supra* note 230; Interview with UNDP, *supra* note 232.

237. NEPAL CONST. (1948). Subsequent constitutions were passed in 1951, 1959, 1962, and 1990, in addition to the interim Constitution of 2007.

238. Though the language was imperfect, earlier constitutions included protections for equality and nondiscrimination, civil and political rights, and socio-economic rights. For an overview of the human rights protections in earlier constitutions, see Wickeri, *supra* note 28, at 439–41.

equality and nondiscrimination provisions are expansive.²³⁹ In Part 4, the constitution further elaborates a series of policies and directive principles, but its provisions are explicitly not enforceable in court.²⁴⁰ The Part 4 policies are sometimes confusingly drafted as goals rather than rights, even where they simply direct the state to enforce Part 3 rights, including the rights to education, health, and employment.²⁴¹ Similarly, Part 4's unenforceable provisions call on the state to "repeal all discriminatory laws,"²⁴² and to "implement effectively international treaties and agreements to which the State is a party."²⁴³

Significantly, the constitution includes an explicit property rights provision that seeks to balance existing interest in property, while also suggesting that in the event of "scientific land reform" in the public interest, compensation will be provided to the original landholder.²⁴⁴ No reforms of this nature have been undertaken, however, due to the political intractability of the land reform issue.

In the new Nepal, the state was especially seeking to advance anti-discrimination and promote the rights of vulnerable populations. For example, the constitution encourages "positive discrimination" on behalf of "minorities, landless, squatters, bonded laborers, persons with disability, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes [Adivasi Janajati], Madhesis[,] and Muslims."²⁴⁵ Moreover, in recent years, the government has increasingly sought to reduce the influence of the caste system in its national development plans, by encouraging, for example, "affirmative action" policies to "level the playing field" for women, certain

239. See NEPAL INTERIM CONST. (2007), pt. 3.

240. *Id.* arts. 33(d), 36(1).

241. See, e.g., *id.* arts. 16–19. In Part 4, the state is directed "to pursue a policy of establishing the rights of all citizens to education, health, housing, employment and food sovereignty." *Id.* art. 33(h).

242. *Id.* art. 33(n).

243. *Id.* art. 33(m).

244. *Id.* art. 19(3) ("Compensation shall be provided for any property requisitioned, acquired or encumbered by the State in implementing scientific land reform programmes or in the public interest in accordance with law. The amount and basis of compensation, and relevant procedure shall be as prescribed by law.").

245. *Id.* art. 35(14).

castes and ethnic groups, and people living in remote areas.²⁴⁶ The policies were welfare driven rather than rights driven, however, and lacked specific implementation strategies, mechanisms to mainstream gender and caste concerns, and monitoring mechanisms.²⁴⁷ Furthermore, all major Nepali political parties include in their platforms various levels of commitment to nondiscrimination. For example, the National Congress Party (“NC”) supports the preservation and promotion of different languages, cultures, and traditions, as well as the use of mother tongues in education. The Unified Marxist-Leninist Party (“UML”) supports a secular state and the provision of reserved seats for *Janajatis* in the National Assembly.²⁴⁸ Despite these commitments, there has been a lack of diversity in both caste and gender within the political establishment, and “the internal power structures of main political parties are not very representative of the diverse citizens they claim to represent.”²⁴⁹ Dalits are not represented on any political party’s Central Committee, women represent less than 10% of committee membership, and “while the RPP party has some 25 percent *Janajatis* on the Central Committee, the two major parties, Congress and UML, have only 10 and 3 percent respectively—even though the Janajati represent over a third of Nepal’s population.”²⁵⁰

246. See Bennett, *supra* note 73, at 35–37.

247. See *id.* at 23–36; see also Rajendra Pradhan & Ava Shrestha, *Ethnic and Caste Diversity: Implications for Development* 16 (Asian Dev. Bank, Working Paper No. 4, 2005), available at <http://www.adb.org/Documents/Papers/NRM/wp4.pdf> (“The Tenth Plan for the first time . . . also recognized the need to address the demands of the socially excluded groups while committing itself to socially inclusive development as a strategy to reduce poverty. However, it does not yet have a clear vision and strategy to address this issue.”). For a discussion of previous development plans, including a discussion of the first plan to address women specifically, in 1981, and Dalits and *Janajatis* in 1997, see generally Bennett, *supra* note 73. Earlier programs during the *panchayat* period, 1961–1990, had ignored caste considerations as a way to support a “modern,” casteless Nepal. This lack of sensitivity to the reality of discrimination, however, resulted in aid largely benefiting elites. See Bennett, *supra* note 73, at 7; Gellner, *supra* note 68, at 1824; Pradhan & Shrestha, *supra*, at 6–8.

248. See Krishna Hachhethu, *The Question of Inclusion and Exclusion in Nepal: Interface between State and Ethnicity*, Presentation to the Conference on “The Agenda of Transformation: Inclusion in Nepali Democracy” 17 (Apr. 24–26, 2003), available at <http://www.uni-bielefeld.de/midea/pdf/harticle1.pdf>.

249. Bennett, *supra* note 73, at 37.

250. *Id.*

II. LANDLESSNESS IN NEPAL: THE IMPACT OF EXCLUSION

*"Both sides agree . . . [t]o adopt a policy to provide land and other economic and social security to the economically backward classes including [the] landless, bonded labours and pastoral farmers."*²⁵¹

*"We do not hope they will help. We tried several times to get the government to help. We collected data and sent it to the government and tried to get [a] certificate several times, but nobody heeds us. There are so many problems. Some people are in Mumbai selling their bodies. We don't get anything to make our life here."*²⁵²

A. Overview

Over two centuries of discrimination, exploitation, and feudal land systems have resulted in persistent landlessness in Nepal. The problem is widespread as evidenced by figures demonstrating skewed landholdings. The 2001/2002 Agriculture Census found that 47% of land-owning households owned just 15% of Nepal's land with an average size of less than 0.5 hectares.²⁵³ In contrast, 5% of the population owned nearly 37% of the land.²⁵⁴ Moreover, the 2004 UNDP Human Development Report further shows that "[a]lmost 29% of rural households [in Nepal] do not own any farmland" at all;²⁵⁵ other figures suggest that at least 10% of Nepalis are completely landless,²⁵⁶ and up to

251. CPA, *supra* note 8, ¶ 3.10.

252. Interview with BSB, in Mudabuzar Town, Kailali District, Nepal (May 14, 2009).

253. UNDP, *supra* note 5, at 43. In Nepali, a hectare is known as a *ha* (equal to 1.5 *bigha*, 30 *kattha*, or 20 *ropani*). WILY ET AL., *supra* note 26, at viii.

254. UNDP, *supra* note 5, at 43. As of 1990, the Gini coefficient, a measure indicating land-holding inequality, was 0.45 in Nepal. In contrast, in the Food and Agricultural Organization's most recent Round of Agricultural Censuses, Finland, with traditionally egalitarian land distribution, measured at 0.26; Brazil, plagued with extreme inequality in land distribution, measured at 0.85. FOOD & AGRIC. ORG. [FAO]—STATISTICS DIV., NUMBER AND AREA OF HOLDINGS, AND GINI'S INDEX OF CONCENTRATION: 1990 ROUND OF AGRICULTURAL CENSUSES, available at <http://www.fao.org/economic/ess/world-census-of-agriculture/additional-international-comparison-tables-including-gini-coefficients/table-1-number-and-area-of-holdings-and-ginis-index-of-concentration-1990-round-of-agricultural-censuses/en>.

255. UNDP, *supra* note 5, at 40.

256. WILY ET AL., *supra* note 26, at 45 (settling on 10% as a conservative estimate of the percentage of Nepalis that are completely landless after examining studies conducted between 2003 and 2006 by groups including the Community Self-Reliance Center, INSEC, the National Population Census, the National Agricultural Census, and

85% of Nepal's rural households can accurately be described as "land poor."²⁵⁷

Official figures on landholdings are outdated and do not cover the entire country; information gathered from interviews with landless people living in the central and western Terai and Hills Districts do provide some understanding of the link between landlessness and violations of fundamental human rights. The interviews conducted as a part of this study suggest that there are two primary negative impacts of the inability to access or control land. First, landlessness impacts the right to an adequate standard of living and the interrelated rights to housing, food, water, and work. Second, the vulnerability created by landlessness results in tenant exploitation, inability to access systems of justice, and makes individuals more susceptible to existing discrimination.

The reasons that communities in the Terai are landless are diverse. In some instances, communities from Hill Districts migrated to the Terai in search of better economic prospects and fertile land, but now squat on public or privately-owned land. In others, communities have been living on the same piece of land for generations on public land or by agreement with a private landlord but have no papers demonstrating tenancy or ownership rights. Other landless groups consider themselves as such because they may have previously lived on the same piece of land for generations but were evicted, or now face evictions or forced removals on an annual or semi-annual basis. In contrast to the range of communities that the delegation met with, however, landlords were almost universally absentees living in large district cities, but more often in Kathmandu or abroad.

B. *Caught in the Power of the Land Certificate*

The land certificate demonstrates ownership of land or registered tenancy and is the primary document that families living in rural communities in Nepal hope to acquire. It is also the document Nepalis use as proof of identity and thus enables access to services and security of tenure. A certificate is provided

the World Bank, each of which used a different standard for total landlessness without defining it).

257. *Id.* at 46.

with official landownership through purchase or distribution, and can also be acquired through registered tenancy. Nepalis without the document are extremely vulnerable to abuse because the law does not recognize unregistered tenants. Even those with certificates have difficulties because they are kept in local government offices and are not computerized—they sit in large cloth sacks arranged roughly by name and area.²⁵⁸ The records sitting in government offices often conflict with documentation that landowners and tenants themselves have.²⁵⁹ Local authorities assert that most people now have land certificates;²⁶⁰ yet interviews suggest that this figure may be overstated as almost two-thirds of the people interviewed as part of this study did not have a land certificate for the land on which they lived, and over one-third had no land certificate at all,²⁶¹ despite having lived on the land for generations in some cases.²⁶²

Although recent reforms to the land tenure laws purportedly sought to make the registration process more accessible, many illiterate tenants have never even heard of the 1964 Land Reform Act setting out those processes, much less understand them. As Prem Chaudhary, a local activist lawyer in Dang District noted, until community organizers started to meet and train landless people there, no one knew about the law allowing people to claim ownership rights in 50% of the land on which they were tenant farmers for at least three years, a right instituted by an amendment made to the Lands Act in 1996.²⁶³

258. Interview with Shankar Vista, Land Reform Officer, Land Revenue Office, in Dhangadi, Kailali Dist., Nepal (May 13, 2009).

259. Interview with Ram Narayan Pandey, Chief Land Revenue Officer, Land Revenue Office, in Rupandehi Dist., Nepal (May 13, 2009).

260. *Id.* Mr. Pandey noted that “[a]ccording to the records of 1970, most people have gotten land certificates.” *Id.*

261. The distinction here arises in two ways. First, because a number of communities migrated from the hill regions to the more fertile Terai several generations ago, individuals sometimes still hold land certificates for land in hill regions. Second, people sometimes have a land certificate for a small plot of land that is part of or near the land on which they live or work. This certificate can represent very small plots and often do not match up with what land is being accessed and used.

262. For example, the Khadgabangai VDC community is comprised of former bonded laborers (*Haliya*), who have been living on the same plot of land for at least two to three generations. Despite being freed from their debt bondage, almost no one in the community holds a land certificate. Interview with Anonymous, Former *Haliya* Farmer, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

263. Interview with Prem Chaudhary, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

Applications for land certificates must be supported by citizenship papers—a document which itself can be obtained by supplying a land certificate or with a recommendation from the local Village Development Committee (“VDC”).²⁶⁴ According to Ram Narayan Pandey, Chief Land Revenue Officer in Rupandehi, after an application is registered, the office “publish[es] a 35-day notice in the newspaper and the VDC office to see if there is any counter-claim, then you get a land survey, then you get the land certificate.”²⁶⁵

The experience of interviewees suggests that the process is not so simple. Many people report visiting local government offices numerous times to attempt to obtain a land certificate but to no avail.²⁶⁶ In some cases, applicants had no proof that they are tillers on the land; in others, they were able to provide documentation. In both cases, however, the land registration process proved difficult to navigate and often ended fruitlessly.²⁶⁷ Often, tenants discover that the land they have lived on for generations is already registered in someone else’s name.²⁶⁸ There have also been reports of landlords taking advantage of their tenants by agreeing to register the land under their own names “under the guise of assistance,” later leaving them disenfranchised.²⁶⁹ For farmers who did not attend school, the process of applying for the certificates is difficult. As one man in Nawalparasi told the delegation, “[w]e have no land, no

264. Nepal Citizenship Act, 2006, art. 8(ii).

265. Interview with Ram Narayan Pandey, *supra* note 259 (“According to the records of 1970, most people have gotten land certificates.”).

266. *See, e.g.*, Interview with Hemlata BK, Sec’y of the Nat’l Land Rights Forum, Village Level Comm., Gheta VDC, Kailali Dist., (May 13, 2009) (“I visited the Land Reform Office once. They told me there was a backlog of requests and that I should return after some time.”).

267. For example, Yam Kumari Sunar, a landless farmer in Rupandehi District, has tried to obtain a certificate many times, even by paying money to have his land surveyed, but nothing has happened. Interview with Yam Kumari Sunar, in Suryapura VDC, Rupandehi Dist., Nepal (May 12, 2009).

268. Interview with Ram Lakhan Harijan, in Gopiganj VDC, Nawalparasi Dist., Nepal (May 14, 2009) (“We went [to the VDC headquarters] but that office told us that it’s not possible to register the land in your name—our land was already registered to [another man]—we all know him from the other village. He has about 10 bighas of land in this district and also has land in Kathmandu. We didn’t know that he had registered the land in his name around 1990! He used to come in the night and survey the land in his name.”).

269. RIGHTS & DEMOCRACY, *supra* note 134, at 42–43.

education, we are poor. We work for others to survive. We don't have time to go to the city and wait in the offices."²⁷⁰

Some local officials admit that there are problems with the system, especially for people who have no documentation about land ownership or tenancy that may otherwise be legitimate. Unregistered tenants are ultimately invisible. As the Chief Land Revenue Officer in Rupandehi District stated, "I can't give a land certificate unless they have proof. . . . I am a government officer, and can only act based on the Act."²⁷¹ The situation is complicated by the fact that local officials and politicians are in league with landlords or are themselves landlords, suggesting that corruption may also be a problem. As one legal advocate for landless tenants noted, "All parties are dominated by landlords. It is still so today. Only the landlords can participate in politics because they have more money and can afford it. Therefore, they implement what is in their best interest."²⁷² A Land Survey Officer in Rupandehi says corruption is impossible: "There has been no corruption and if it happens it would be a crime."²⁷³ Local government workers admit, however, that official channels are not available to people who are "landless," or unregistered,²⁷⁴ and many people are not registered because agreements have been verbal for generations.²⁷⁵ The fact remains, however, that the lack of registration has a real impact on people's everyday lives.²⁷⁶

270. Interview with Anonymous, Unregistered Farmer, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

271. Interview with Ram Narayan Pandey, *supra* note 259.

272. Interview with Vijaya Kumar Gupta, Lawyer and Member, Terai Madesh Democratic Party, in Bankatti, Nepal (May 15, 2009).

273. Interview with Baburam Bhandari, Land Survey Officer, Dist. Land Survey Office, in Rupandehi Dist., Nepal (May 13, 2009). Yagya Pakhore, a local Maoist politician in the same district, however, notes that problems occur because there is no political will on the issue of land reform and land rights. Interview with Yagya Pakhore, *supra* note 230.

274. In Rupandehi, the Land Survey Officer said, "This office only deals with official settlements that are registered. . . . This office is not going to register landless people." Interview with Baburam Bhandari, *supra* note 293.

275. Ram Chandra Dhatal, Chair of the Rupandehi Dist. Nepali Congress Party, noted that this was a key problem for many people living in Rupandehi District. Interview with Ram Chandra Dhatal, *supra* note 230.

276. *See, e.g.*, Interview with Hemlata BK, *supra* note 266 ("One needs to have a land certificate to be able to have meters in the house for electricity. . . . We also cannot obtain loans without a land certificate.").

C. *Landlessness, Poverty, and Living Standard*

Landlessness in Nepal is a strong predictor of poverty and is also an indicator of limited rights to housing, food, water, and work.²⁷⁷ Almost 40% of households holding less than 0.2 hectares of land fall below the poverty line, in contrast to 23.8% of those with more than two hectares.²⁷⁸ Poverty in the Terai and Hill district communities varies and tends to increase the farther west they are situated. Most families live with or near their extended families in one or two room shelters that accommodate ten or more people. While some communities—even those where people are not formal tenants—are better established and have permanent structures and small businesses,²⁷⁹ most landless communities live in temporary or semi-permanent structures with roofs made of hay, mud, or corrugated metal.²⁸⁰

Without the land certificate necessary to have electricity and water services installed on community land or in a family home,²⁸¹ however, landless families must walk for miles to access drinking water, and most live without electricity. Most landlords do not provide water and electricity for tenants living on private land, and without paperwork, tenants have no other way of

277. A full discussion of the intricate link between poverty and human rights is beyond the scope of this Report. The CESCR has defined poverty as “a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.” U.N. ECOSOC, CESCR, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, ¶ 8, U.N. Doc. E/C.12/2001/10 (May 10, 2001). The committee notes that in 1948 the Universal Declaration of Human Rights established poverty as a human rights issue by including “freedom from want” in its preamble. *Id.* ¶ 1 & n.1. A rights-based approach to poverty recognizes that poverty can result from violations of existing human rights obligations by states, and some commentators view the condition of poverty itself as a human rights violation. For a discussion of this debate, see discussion and sources cited in Wickeri, *supra* note 28.

278. WILY ET AL., *supra* note 26, at 49.

279. For example, Suryapura VDC in Rupandehi District (Western Region) had numerous permanent concrete structures; in contrast, Manilekh VDC in Dadeldhura District (Far Western Region) was comprised primarily of semi-permanent wooden structures.

280. In Rupandehi District, for example, community members described their homes as made of mud with hay roofs. Interview with Ram Dutta Harijan, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009); Interview with Yam Kumari Sunar, *supra* note 272.

281. See Deuja, *supra* note 21, at 221–22; RIGHTS & DEMOCRACY, *supra* note 134, at 53; CSRC, *supra* note 22; see also *supra* note 276.

getting services installed, even if they have the financial means. Tenants on public land similarly have no channel to have services installed, even if they have been living on the same plot for years. As one woman related in Nawalparasi, she and others “tried to get electricity many times through political parties, the VDC, government, but no one cares. We were told that, because we are on public land, it is not possible.”²⁸²

Even where landlords have installed wells or water taps on land near community homes, they are often dry, as in Khadgabangai VDC in Rupandehi District.²⁸³ And for land certificate holders who do apply for service installation, tenants report having to bribe local bureaucrats as well as service people who install them.²⁸⁴ Finally, even where communities are wired, servicing one’s home is often cost prohibitive for families that struggle to put food on the table.²⁸⁵

The government’s census figures indicate that 75% of Nepal’s farms have less than one hectare of land, which is calculated to be the minimum amount of land required to produce enough crop for subsistence and a basic level of surplus that would enable families to meet their bare needs and reduce debts.²⁸⁶ Access to food is therefore one of the biggest struggles for landless and land-poor families, particularly large families.²⁸⁷ Falupati Chaudhary, her husband, and their three children till one-sixth of a hectare of land and have a land certificate for part of that land. She notes, “The land provides only five months of food for my family. The other months, we have to [do other] work.”²⁸⁸ Nabin BK in Kailali reports that on his three *katthas* of

282. Interview with Women’s Group, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

283. *See id.*

284. For example, even after registering with the Nepal Electricity Authority and providing an official deposit of 1000 Rupees, Radhar Tharu in Nawalparasi had to give an additional 500 Rupees to the man who installed her electricity for his refreshments. She noted that this is a standard bribe, and everyone expects it. Interview with Radhar Tharu, Resident, Gopiganj VDC, in Nawalparasi Dist., Nepal (May 14, 2009).

285. Interview with Kalidevi Parki, in Kahanmada Vill., Amargodhi VDC, Dhadeldhura Dist., Nepal (May 12, 2009).

286. WILY ET AL., *supra* note 26, at 123.

287. *See* Interview with Dhanrupee Pariyar, in Suryapura VDC, Rupandehi Dist., Nepal (May 12, 2009) (“If you have a few family members, you are okay for food. If you have more family members, there is not enough food.”).

288. Interview with Fulapati Chaudhary, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

land, where he lives with his wife and four children, he can only produce two months of food each year.²⁸⁹ A man in Kailali argues that access to more land is more important than having title to the small plot he lives on: "If we had title for that one *kattha* of land, should we eat it?"²⁹⁰

Food production depends not only on the weather in a particular year,²⁹¹ but also the quality of the land. Many complain that landlords provide landless communities with only poor-quality land to till, keeping the fertile land for themselves; Kalidevi Parki, in Amargodhi VDC, put it simply: "Nothing will come from our land. Many evenings I do not eat anything."²⁹² Another woman complained, "There is not enough food. . . . If there isn't enough money, then we just eat rice and salt. If we have enough, we will eat two meals. If not, then we will eat one meal."²⁹³

Because most families do not produce enough food for themselves, they are frequently unable to sell excess produce to make an additional salary, impacting their health and ability to access education. When family members fall ill, they are unable to pay for medical expenses.²⁹⁴ Although elementary education is free under Nepali law, many Nepalis cannot afford books, uniforms, and other supplies.²⁹⁵

Nepalis are tied to the symbolic importance of land,²⁹⁶ making opportunities outside of an agricultural living unpopular with many. As Guje Parki said, "Everything is related to land. If

289. Interview with Nabin BK, in Masuriya VDC, Kailali Dist., Nepal (May 14, 2009).

290. Interview with Anonymous, in Dodoghora Vill., Kailali Dist., Nepal (May 14, 2009).

291. See Interview with Kaludevi Lohar, Resident, Manilekh VDC, in Dadeldhura Dist., Nepal (May 12, 2009) ("I have not enough food. If we do hard labor on the rented land and if the monsoon is good, we produce more."); Interview with Kalidevi Parki, *supra* note 285 ("In this year, I could not produce any food because of the dry season.").

292. Interview with Kalidevi Parki, *supra* note 285.

293. Interview with Women's Group, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

294. See, e.g., Interview with Deepa Chaudhary, in Masuriya VDC, Pecharani Kuttan, Kailali Dist., Nepal (May 14, 2009) ("We have no services or food [here]. There is a food crisis in my family. When family members are ill we can't manage treatment.").

295. See Interview with BSB, *supra* note 252.

296. As Deepak Shreta, a District Officer with OHCHR for the Far Western Region of Nepal put it, "In Nepal, land is the main status symbol. Land is everything in Nepal. People cannot imagine a family without land." Interview with Deepak Shreta, Dist. Officer, Far-Western Region, OHCHR, in Kailali Dist., Nepal (May 15, 2009).

there was land we could grow vegetables [and] crops that could be a means of livelihood for us.”²⁹⁷ However, so little else is available in rural Nepal, and discrimination prevents Dalits and other marginalized communities from taking advantage of those few employment opportunities that do exist. Furthermore, because they do not own enough land on which to grow food and cannot access credit to take out official loans, landless and land-poor people frequently have to rely on loans from their landlords for school fees, medication, supplemental food and water, and other expenses, which they often cannot repay.²⁹⁸

D. *Tenant Exploitation and Security of Tenure*

Although laws protect against arbitrary evictions, communities in Nepal reported that evictions were in fact frequent. For example, Syam Kumari Rana said: “We came here and started sharecropping. We were evicted [by] one landlord and went to another one, then were evicted again, then went to another one. In fifteen years, we have had a lot of sorrows.”²⁹⁹ Numerous interviewees asserted that they should be permitted to remain on the land on which they live because they have been living there for generations,³⁰⁰ but without a land certificate—a document necessary for all manner of services in Nepal—they have no proof and constantly fear eviction. Moreover, landless people are disempowered: they are vulnerable to exploitation by a more powerful landlord and local authorities, and do not feel they have the time, money, or skills to seek justice where their rights are infringed.³⁰¹

297. Interview with Guje Parki, in Kahanmada Vill., Amargodhi VDC, Dhadedhura Dist., Nepal (May 12, 2009).

298. Interview with Women’s Group, *supra* note 282; Interview with Women’s Small Group, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009).

299. Interview with Syam Kumari Rana, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

300. *C.f., e.g.*, Interview with Bishnu Kumal, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009); Interview with Guru Prasad, in Kerwani VDC, Rupandehi Dist., Nepal (May 12, 2009); Interview with Lila Chaudhary, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

301. *See e.g.*, Interview with Nanka Dodiya, in Bankatti VDC, Banke Dist., Nepal (May 14, 2009).

1. Evictions and Security

Many Nepalis said that lack of secure tenure was the most difficult part of living with no land certificate:

Poor peoples' voice is not [heard]. We have no experience with lawyers or courts. We go to the VDC to file cases, not the courts. We went to the VDC for settlement to provide housing. [We] [f]iled a case, but they did nothing. What can be done? If we got a land certificate—then we would feel security.³⁰²

Ownership or tenancy rights are formalized through the provision of a land certificate or, in some cases, a grain receipt (to show formal agreement with a landowner). Without those papers, landlords can appeal to local authorities to have them lawfully evicted.³⁰³ The law does not require any of the due process procedures including formal notification and negotiation required under international law during evictions proceedings.³⁰⁴ More often than not landlords simply evict communities, often violently. One man in Bankatti VDC, Banke District, said that in one case, over twenty people hired by their landlord came and beat people living in his community and burned down several of their homes.³⁰⁵ In many cases, as in Bankatti, landlords also assert control over adjacent public land that they want to use. In Bankatti, the landlord also evicted people from public land.³⁰⁶ Forty-two people were evicted in this case but later returned; months later, the landlord returned to destroy the crops the community had been tilling.³⁰⁷ Now, three years later, he and other families from the community live on another piece of public land.³⁰⁸ Others are moved or evicted on a regular basis so that the landlord can prevent tenants from registering for land ownership rights.³⁰⁹ People living on public lands are similarly at risk for eviction and fear being removed when they notice public

302. Interview with Women's Group, *supra* note 282.

303. See Lands Act, 1964, ch. 7 (Nepal).

304. See *id.*

305. Interview with Community Members, in Bankatti VDC, Banke Dist., Nepal (May 14, 2009).

306. *Id.*

307. *Id.*

308. *Id.*

309. Interview with Gaya Prasad Chaudhary, *supra* note 192.

works that are likely to affect the land on which they live.³¹⁰ Others live day to day with the threat of eviction. Gayan Bahadur Rokka in Kamdi VDC, Banke District, said, "The landlord just says that this is his private land and that I must leave,"³¹¹ and another said that during a meeting the landlord threatened to "bury" him.³¹²

The inadequacy of land records impacts people in very real ways. Several people noted that after living on a plot of land for years, improving the land, and building a house on it, they attempted to register their land, but were unable to do so because someone else had registered the land.³¹³ As Ram Avatar said, "I have built a house, but now it is useless because I don't have the land certificate to my land."³¹⁴

Although people tend to be aware that their rights are being violated, they feel there is little to do. Prem Saeliari, a tenant farmer in Banke, said that when her landlord evicted her, "[t]here was no official eviction process. He simply told me to leave."³¹⁵ She had asked the landlord to allow her to return, but she was not hopeful: "The landlord has recently purchased two bulls. I believe I have been replaced."³¹⁶ Most people are skeptical that the local government can or will help them, and in some cases local authorities do nothing when people come for help. The man evicted from his home three years ago in Bankatti VDC, Banke District, said that after the eviction, he went to the

310. A woman in Khadgabangai VDC, Rupandehi District said her community fears eviction because the government is expanding the road near their homes. *See* Interview with Women's Group, *supra* note 282.

311. Interview with Gayan Bahadur Rokka, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009).

312. Interview with Sherbahadur Basnet, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009).

313. Interview with Buldhu Harijan, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009) ("I got a copy of the map to ask [the local government office about my land registration]. In the meantime, another person had built on my land. I complained to the Chief District Officer . . . I went to multiple offices, and got a letter from the VDC. Again they said I had no rights. . . . Now I don't have land, and I work as a laborer.").

314. Interview with Ram Avatar, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

315. Interview with Prem Saeliari, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

316. *Id.*

police, but “the District Officer threatened us. Nobody cared or listened.”³¹⁷

2. Exploitation

Landlords often take steps to limit a formal relationship with tenants in order to avoid the associated obligations that such a relationship would create.³¹⁸ They also take advantage of the fact that many of their tenants are illiterate. None of the individuals interviewed had entered into a written contract with the landlord; oral agreements³¹⁹ are traditionally renewed each year. In the case of former bonded laborers, this happens during the festival of the Maghi (December/January), as was the practice under the bonded labor system. In Argu VDC, Dang District, Haule Chaudhary said that he had never thought about asking to enter into a written agreement because that is not the tradition.³²⁰

People did report signing written agreements when they took a loan from their landlord, however. In Kerwani VDC, Rupandehi District, almost all the women interviewees had taken loans from the landlord.³²¹ The women reported putting their thumbprints on the contract, but not knowing what it said because they are illiterate.³²² Their vulnerable tenancy prompted them to sign regardless of what the landlord said. While his assistants would sometimes read the contract to them, they were never provided with a copy of the agreement.³²³ As a result, they do not know exactly what they owe. Though the landlord sometimes told them that they had paid off the interest, he never said that the principal had reduced.³²⁴

Many tenants are not aware of the rights associated with a grain receipt and therefore do not ask for one, thus being left with no evidence of their right to till or live on the land, leaving

317. Interview with Community Members, *supra* note 305.

318. *C.f.* Lands Act, 1964, ch. 7 (Nepal).

319. *See, e.g.*, Interview with Men’s Group, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

320. Interview with Haule Chaudhary, in Argu VDC, Dang Dist., Nepal (May 11, 2009).

321. Interview with Women’s Small Group, *supra* note 298.

322. *Id.*

323. *Id.*

324. *Id.*

them vulnerable to abuse. Kamal Bahadur Chaudhary believed that if he asks for a receipt he would not be allowed to work: "The landlord will think you are betraying him if you ask for small things."³²⁵ After her eviction, Prem Saeliari had no evidence—a land certificate, tenancy agreement, nor grain receipt—that she had lived in her home. She said, "I never asked for the documents and . . . the landlord did not give them to me. Why would I ask? I believed in him. I couldn't ask him because he is big and we are little."³²⁶

Arnahawa VDC, Dang District, lies on *Guthi* land that is owned by a local temple. The community provides the temple with 50% of its crops, but receives no grain receipts. In 1988, one of the temple priests charged the community with not paying its crop production; the community had no receipts as proof. This year, the community began to ask for receipts and the temple refused to provide them, threatening eviction.³²⁷ Dalnuttu Tharu in Kamdi relates that when his community first asked for receipts, "[t]he landlord responded by saying that anyone who needed land receipts needed to leave the land."³²⁸ Now he provides them in some cases. Even where grain receipts are provided, tenants are ill equipped to ensure their accuracy. Sukadaiya from Kamdi related that when she and her husband received their first grain receipt, she had someone read them to her. First, it did not include the landlord's signature. Later, she discovered the plot number was incorrect.³²⁹

Moreover, ex-bonded laborers in many cases noted that their lives are substantially the same as when they had been bonded and that the land redistribution programs promulgated by the government have largely not been implemented. Ex-*Kamaiya* families are still forced to borrow from their landlords when they are unable to make a living through farming, thereby renewing debts.³³⁰ *Kamaiya* could previously be bought and sold,

325. Interview with Kamal Bahadur Chaudhary, in Masuriya Vill., Peharani Kattan, Kailali Dist., Nepal (May 14, 2009).

326. Interview with Prem Saeliari, *supra* note 315.

327. Interview with Community Members, in Arnahawa VDC, Dang Dist., Nepal (May 12, 2009).

328. Interview with Dalnuttu Tharu, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009).

329. Interview with Sukadaiya X, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009).

330. See Posel, *supra* note 123, at 130; Nepali & Pyakuryal, *supra* note 127, at 100.

or have their contracts—which are verbal—renewed during the Festival of Maghi in mid-January of each year.³³¹ Due to the power imbalance between the landlords and *Kamaiya* workers, *Kamaiya* have very little negotiating power and still live by the terms decreed by the landlords.³³² Because the agreements are verbal, many *Kamaiya* do not know or cannot keep track of the terms of their debts, and many, whose families have been working off a debt for generations, do not know the origins of their debts.³³³

Reports suggested that, under the debt-bondage systems, landlords added to the balance of *Kamaiya* debts, taking advantage of their illiteracy.³³⁴ This financial dependency remains in the form of loans with interest rates sometimes as high as 60%.³³⁵ After bonded labor was abolished, the government distributed some plots of land to at-risk ex-*Kamaiya* and ex-*Haruwa*—those categorized by the government as being totally landless or almost landless.³³⁶ The land distributed under the government program, however, is not sufficient for anything more than shelter.³³⁷ On many public lands, there are squatter populations of ex-bonded laborers who have nowhere to go and have not been helped by the government's land distribution schemes.³³⁸

For tenants in Dehilely Village, Dadeldhura District, little has changed since they were freed from *Haliya* bondage. Shankar Lohar said that while things are a little different because the

331. See Posel, *supra* note 123, at 128.

332. OMCT, *supra* note 122, at 168–74.

333. Gurung, *supra* note 60, at 22. In fact, the UNDP found that, when surveyed, only 7% of *Kamaiya* knew the origin of their debt or its terms. Posel, *supra* note 123, at 125 n. 12; see also Chairman-Rapporteur of the Working Group on Contemporary Forms of Slavery, *Rep. of the Working Group on Contemporary Forms of Slavery*, Comm'n on Human Rights, ¶¶ 51–52, U.N. Doc. E/CN.4/Sub.2/1993/30 (June 23, 1993) (by Ioan Maxim); Special Rapporteur on the Sale of Children, *Rep. of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography*, Comm'n on Human Rights, ¶ 10, U.N. Doc. E/CN.4/1994/84/Add.1 (Jan. 20, 1994) (discussing how *Kamaiya* families are locked into never-ending debt to their landlord, forcing its members—including children—to work under “exploitative” conditions).

334. See Nepali & Pyakuryal, *supra* note 127, at 99–100.

335. Interview with Deepa Chaudhary, *supra* note 294.

336. *The Kamaiya System of Bonded Labour in Nepal*, OMCT, 25 (2005), available at http://www.omct.org/files/interdisciplinary-study/ii_b_3_nepal_case_study.pdf.

337. RIGHTS & DEMOCRACY, *supra* note 134, at 50.

338. See *id.* See generally WILY ET AL., *supra* note 26 (discussing land reforms in Nepal Bonded Labour (Prohibition) Act, 2002 (Nepal)).

landlord cannot compel him to do something he does not want to do, he still has to work to pay back his loans.³³⁹ The landlord for the Dehilely villagers, however, remains abusive,³⁴⁰ and has diverted water from a pump installed for them by an international NGO to water his own crops.³⁴¹

3. Inequality and Discrimination

A review of Nepali land ownership and control patterns reveals that they turn primarily on the axes of caste, ethnicity, and gender, despite protections in the law.³⁴² Civil society and political movements along caste and ethnic lines have become more frequent in the years following *Jana Andolan*.³⁴³ The National Foundation for the Development of Indigenous Languages ("NFDIL") was established in 2002, though it struggled with lack of funding and political instability.³⁴⁴ Ethnic minorities have also been specifically included in the last four five-year development plans.³⁴⁵ There has also been a marked increase in Dalit organizing,³⁴⁶ and a National Dalit Commission was established in 2002.³⁴⁷

Discrimination against Dalits and the belief in and practice of "untouchability" continue to exclude equal access to political, economic, and social power. Dalit communities³⁴⁸ are poorer than higher-caste households.³⁴⁹ Two-thirds of the communities the delegation with were primarily Dalit communities, who

339. Interview with Shankar Lohar, in Dehilely Vill., Manilekh VDC, Dadeldhura Dist., Nepal (May 12, 2009).

340. Interview with Gauri Lohar, in Dehilely Vill., Manilekh VDC, Dadeldhura Dist., Nepal (May 12, 2009).

341. Interview with Shankar Lohar, *supra* note 339.

342. See *supra* notes 73–89 and accompanying text.

343. See Geiser, *supra* note 65, at 26–28.

344. See HANGEN, *supra* note 64, at 40.

345. See *id.* at 41.

346. STEPHEN D. BIGGS ET AL., AN EXPLORATORY STUDY OF GENDER, SOCIAL INCLUSION AND EMPOWERMENT THROUGH DEVELOPMENT GROUPS AND GROUP-BASED ORGANIZATIONS IN NEPAL 76 (2004), available at <http://www.infobridge.org/asp/documents/3283.pdf>.

347. See Bennett, *supra* note 73, at 27.

348. There is also an internal hierarchy within the Dalit population, with some Dalit groups having a higher social status than others. See Cameron, *supra* note 63, at 220.

349. CHRCJ, *supra* note 61, at 7–8.

reported discrimination and abuse from their landlords.³⁵⁰ Caste discrimination is an issue that the government of Nepal has recently sought to address.³⁵¹ The Nepali Supreme Court has also considered cases dealing with both gender and caste discrimination.

Little has changed, however. Dalits, who comprise over 20% of the population of Nepal own only 1% of the nation's wealth and 1% of its arable land.³⁵² Ninety percent of Dalits in Nepal live below the poverty line, compared with 45% of the general population,³⁵³ and this is especially true in the Terai.³⁵⁴ This discrimination and its concomitant poverty results in problems for Dalits in accessing water, food, and basic healthcare needs, and a lower life expectancy than non-Dalit populations.³⁵⁵ On average, high-caste Brahmins and Newars live eleven years longer than Dalits.³⁵⁶

Gender inequality also remains a problem. Nepal has historically been, and remains a highly patriarchal society, and gender inequalities exist within castes and ethnic groups, such that Dalit women occupy the lowest socio-economic place in society and face the most extreme forms of discrimination.³⁵⁷ Women bring in 61.1% of the agricultural sector's revenue, yet they own only 5% of the country's arable land.³⁵⁸ Traditional

350. See Interview with Community Members, in Banke Dist., Nepal (May 13, 2009).

351. See, e.g., Comm. on the Elimination of Racial Discrimination, Reports Submitted by States Parties under Article 9 of the Convention: Sixteenth Periodic Reports of States Due in 2002: Addendum: Nepal, ¶ 75, U.N. Doc. CERD/C/452/Add.2 (July 30, 2003) ("The persistence of a caste-based ideology in the day-to-day life of people has not been totally eliminated, especially in rural areas of the country. Casteism is a major social problem that still makes the Dalits vulnerable to attitudinal discrimination in society."); ECOSOC, CESCR, Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Nepal, ¶¶ 7, 8, 32, 43, U.N. Doc. E/C.12/NPL/CO/2 (Jan. 16, 2008); Human Rights Comm., Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Comments of the Human Rights Committee: Nepal, ¶¶ 7–8, U.N. Doc. CCPR/C/79/Add.42 (Nov. 10, 1994).

352. CHRGCJ, *supra* note 61, at 8.

353. See HUMAN RIGHTS WATCH, CASTE DISCRIMINATION: A GLOBAL CONCERN 18 (2001), available at <http://www.hrw.org/legacy/reports/2001/globalcaste/casta0801.pdf>.

354. See Bennett, *supra* note 73, at 15.

355. See CHRGCJ, *supra* note 61, at 11–14.

356. See Bennett, *supra* note 73, at 16.

357. See Pradhan & Shrestha, *supra* note 70, at 12.

358. See Sabitra Bhusal, *Opening Horizons: Deepened Challenges*, ENGENDERING DEMOCRATIC GOVERNANCE (Dec. 30, 2010, 11:47 AM), <http://www.engendering>

religious, cultural, and socio-political discrimination explain this limited female ownership. Women have historically been considered subservient to men in Nepali society. Therefore, despite the fact that they contribute more than men to the agricultural sector's revenue, they hold little legal tenure.³⁵⁹ Nepali women interviewed in 2006 described how women risk divorce should they ask for land in their own name and that the process to secure land via the legal structure is too cumbersome for them to navigate successfully on their own.³⁶⁰ Prior to the passage of the Women's Property Rights Bill in 2002, women did not have the right to inherit their husband's property in the event of his death unless they had been married for fifteen years or she had reached thirty-five years of age.³⁶¹ And prior to the 2007 Interim Constitution, women had to return any inherited land to her male siblings upon remarriage.³⁶²

Land access also significantly impacts the lives of indigenous peoples. In the 2001 census, the tribal populations accounted for 37% of the total population of Nepal,³⁶³ which includes the significant Tharu population of the western Terai. Tharus, while comprising 6.8% of the overall population, make up a majority of

democracy.net/articles/opening-horizons-deepened-challenges-sabita-gyawali (stating that women own 10% of the land and 5% of arable land); see also UNDP, *supra* note 5, at 43 (stating that women own 8% of rural land); WILY ET AL., *supra* note 26, at 55 (noting that women own smaller plots than men). Note that 90% of women working outside of household labor work in the agricultural sector—the highest rate in South Asia. RIGHTS & DEMOCRACY, *supra* note 134, at 24.

359. See Yamuna Ghale, *Land in the Realm of Exclusion and Globalization*, SOUTH ASIA PARTNERSHIP CANADA, 1 (Nov. 22, 2004), <http://action.web.ca/home/sap/attach/22NOVEMBER2004%20Nepal%20land.doc>.

360. See WILY ET AL., *supra* note 26, at 55.

361. See Binda Pandey, *Women's Property Right Movement and Achievement of the 11th Amendment of the Civil Code*, NEPAL DEMOCRACY, http://www.nepaldemocracy.org/gender/property_rights_movement.htm (last visited Nov. 11, 2010). Only since the Women's Property Rights Bill were women granted the right to inherit ancestral lands. *Id.*

362. Compare NEPAL INTERIM CONST. (2007), art. 20(4) ("Son and daughter shall have equal rights to their ancestral property."), with Jessica Neuwirth, *Inequality before the Law: Holding States Accountable for Sex Discriminatory Laws under the Convention on the Elimination of All Forms of Discrimination against Women and through the Beijing Platform for Action*, 18 HARV. HUM. RTS. J. 19, 31 (noting that under the *Muluki Ain*, women cannot independently use their property and inherit ancestral property).

363. See RIGHTS & DEMOCRACY, *supra* note 134, at 25.

several far-western districts.³⁶⁴ As of 2002, the Ministry of Law, Justice, and Parliamentary Affairs officially recognized fifty-nine *Janajati* groups, and almost all of these groups have an official representative organization.³⁶⁵ Many of these indigenous groups rely on rivers, lakes, and forests. In 1973, the national government passed the National Parks and Wildlife Conservation Act, which provides the basis for the management of protected reserves and national parks in Nepal—approximately 40% of the nation's land.³⁶⁶ The act established reserves and parks over time in the territories of the indigenous peoples, displacing them from the land upon which they had depended for generations.³⁶⁷ These indigenous communities are then technically classified as squatters on public land, even though many families have been living on the land for generations.³⁶⁸ The government often relocates the indigenous groups to areas outside the now-protected land reserves, stripping them of their ancestral land and traditional livelihood.³⁶⁹ With the establishment of the Chitwan National Park in the Terai, for example, an indigenous community that relied on the park's Narayani River for food had to seek a new food source, as the government banned fishing in it. But the government was working to increase its own revenue from the land, granting an exclusive contract to operate ferries in the park to a private company.³⁷⁰ The state's failure to seek consent from the relevant stakeholders in the land shows that it has not effectively addressed the negative impacts that protected area and forest management policies have on equitable and fair access to natural resources and land. The state's resettlement provisions have instead served as serious impediments to secure land tenure for indigenous communities and others who have

364. See Dahal, *supra* note 66, at 99, 117; Pradhan & Shrestha, *supra* note 70, at 9. For a detailed examination of the Tharu community, see ARJUN GUNERATNE, *MANY TONGUES, ONE PEOPLE: THE MAKING OF THARU IDENTITY IN NEPAL* (2002).

365. See Gellner, *supra* note 68, at 1825 (2007).

366. See RIGHTS & DEMOCRACY, *supra* note 157, at 29. See generally National Parks and Wildlife Conservation Act, 1973 (Nepal).

367. See RIGHTS & DEMOCRACY, *supra* note 134, at 29.

368. Two resettlement officers reported that there were at least 10,000 landless and spontaneous settler households in each of the twenty Terai Districts. See WILY ET AL., *supra* note 26, at 97.

369. See RIGHTS & DEMOCRACY, *supra* note 134, at 39.

370. See *id.* at 42.

historically resided, often based on customary land ownership, on now-protected land.³⁷¹

Low-caste and minority interviewees as well as women all reported that discrimination remained one of the biggest challenges to access to land, both in terms of practical access and access through local government offices. Women especially reported that, although laws had changed such that land certificates should now show both a husband and a wife's name, women frequently do not appear on the land certificate. One woman said, "It was just the tradition. Nobody has changed the names."³⁷² Low-caste Nepalis also reported particular difficulty in accessing services within their communities, particularly running water and public buildings, as well as access to temples, due to discrimination.³⁷³

4. Political Exclusion and Access to Justice

For a long time, it was difficult to obtain citizenship without a land certificate, the legal proof of ownership over a plot of land. The Nepal Citizenship Act of 2006 now provides for the grant of citizenship without proof of land ownership, but in order to obtain a land certificate, one must still have a citizenship certificate or a recommendation from the local VDC.³⁷⁴ Many Dalits and indigenous communities do not have citizenship.³⁷⁵ Political power is therefore tied to land access and ownership.

Access to justice was also a key problem for landless communities in Nepal. If individuals were arbitrarily evicted, they

371. *See id.* at 37–38.

372. Interview with Woman with Land Certificate, in Godiparsauri VDC, Nawalparasi Dist., Nepal (May 14, 2009).

373. *See* Interview with Men's Group, *supra* note 319 ("As of 8 years ago, there are two separate temples: one for Dalits, one for others. Certain jobs are not available to Dalits because non-Dalits do not want us to enter their homes."); *see also* Suresh Dhakal, *Harua, The Unfree Agricultural Labourer: A Case Study from Eastern Tarai*, 34 *CONTRIBUTIONS TO NEPALESE STUD.* 277, 296 (2007); Paul White, *Reducing De Facto Statelessness in Nepal*, 32 *FORCED MIGRATION REV.* 28, 28 (2009) (explaining that citizenship also brings rights such as formal sector employment, banking facilities and loans, business, birth, death and marriage registration, higher education, and government benefits and allowances).

374. *See* Nepal Citizenship Act, 2006, § 8.

375. *See* Ghale, *supra* note 359, at 1. According to Posel, scores of marginalized communities have yet to be registered as citizens. *See* Posel, *supra* note 123, at 128 ("When a new program to register the disenfranchised was completed in 1989, only six of Nepal's eighteen million persons were [counted] as 'citizens.'").

often found no recourse in the law or in the local government offices. In some cases, this was because local government offices were either unwilling or unable to help them. In others, landless people simply could not afford lawyers or court fees. As one local government official reviewing land claims in southern Nepal noted, if people cannot settle their disputes through administrative channels and “can’t pay the [court] fee, . . . then that’s it.”³⁷⁶ As Ram Dutta Harijan noted, “We don’t have any money and we don’t know a lawyer. We are very poor and we would be happy with any support. Without money, we can’t file the case.”³⁷⁷ Moreover, political parties and government officials have taken advantage of the vulnerability of these people by promising land redistribution if communities vote for their parties. When political parties are conscious of election season, they run campaigns that call for land reform and tenancy rights.³⁷⁸ But in power, they are cautious to protect their own economic security and positions in government, especially in a country that sees frequent political turnover. As one farmer noted, “Political parties use us and throw us away.”³⁷⁹

E. *Emerging Trends and Opportunities*

1. Pro-Poor Land Rights Advocacy

Because successive governments and politicians have been unable to make any changes, civil society has responded by organizing at a national, regional, district, and community level. The Community Self-Reliance Centre (“CSRC”) has emerged as

376. Interview with Ram Narayan Pandey, *supra* note 259. One landless tenant, Ram Dutta Harijan, a man from the Harijan (Dalit) caste, provided a number of examples of instances in which he had been discriminated against and exploited. See Interview with Ram Dutta Harijan, *supra* note 280.

377. Interview with Ram Dutta Harijan, *supra* note 280.

378. As one landless farmer noted, “The Nepali Congress said that they would solve the problem [of landlessness]. Then the UML said that too—only promises, no action. Now the Maoists have said the same, but still no action. Before the elections, everyone promises everything, but after the election, no one does anything.” Interview with Sumitra Sunar, in Khadgabangai VDC, Rupandehi Dist., Nepal (May 11, 2009).

379. Interview with Cheta Raj Puri, in Mashurya Vill., Kailali Dist., Nepal (May 14, 2009) (“They come at the time of elections and make promises but never do anything. We don’t believe political parties. We voted. . . . Political parties came and wrote down the house numbers and wrote fake notes to get us to vote. Then they used us and threw us away.”).

the key land-rights group in Nepal and has a presence in fifty of Nepal's districts. The CSRC provides support to land-rights activists, trains them, and intervenes politically in Kathmandu. The CSRC has cooperated with local governments to identify communities for whom land certificates have been difficult to obtain despite ample evidence to support their applications. Through their work, thousands of land certificates have been distributed.

Community members also organize to help themselves in a variety of ways, including arranging for their own hand-water pumps where they are unable to set up services in the community for lack of land certificates.³⁸⁰ They further argue that only through organizing themselves are they able to withstand the ever increasing pressures of the landlords who often collude with the government or police.³⁸¹ Numerous activists and individuals contended that it was only through organizing that they were able to resist evictions. However, land rights activists themselves face harassment that is often violent because of their growing power. As Khushi Ram, a land activist from Kailali, notes, "Because I am in the movement, the landlord gave me land for one year and then told me to go to another land We live on the land and the landlord tells us to leave. There are forced evictions. This happens on a yearly basis."³⁸² Bishnu Roka, an activist working in Banke with the Centre for Social Development and Research, a small NGO in the Terai said she faces threats from "gangs" hired by the landlords. She said that some were "underground parties" who attack them and have guns. Others were gangs of the landlords, she said, who spy on the local communities.³⁸³

2. State Responses and Reform

Since the end of the ten-year Maoist insurgency, the government has sought to engage the issue of land reform in a

380. See, e.g., Interview with Ganga Chaudury, in Gopiganj VDC, Nawalparasi Dist., Nepal (May 14, 2009). In Gopiganj VDC, community members installed hand pumps several years ago and now almost everyone has a hand pump. *Id.* Those without pumps share with neighbors. *Id.*

381. See *supra* note 272 and accompanying text.

382. Interview with Khushi Ram, Land Rights Activist, Nat'l Land Rights Forum, in Dadheldhura Dist., Nepal (May 12, 2009).

383. Interview with Bishnu Roka, Land Rights Activist, CSDR, in Kamdi VDC, Banke Dist., Nepal (May 13, 2009).

variety of ways: through the constitutional drafting process and the discussion of the place of socio-economic rights in the constitution; through engaging land rights groups; and by the formation of two key commissions dealing with the issue of land and landlessness. Indeed, the CPA set the agenda in 2006 that included promises of greater attention to socio-economic rights in general and also had provisions referencing land specifically. The CPA makes a commitment to socio-economic rights, recognizing rights to livelihood.³⁸⁴ As compared to other frameworks adopted in post-conflict settings, the CPA may be “quite revolutionary in its explicit and targeted focus on economic and social justice”³⁸⁵ and for adopting policies for “political, economic and social transformation” in the country.³⁸⁶ Land reform is central to the goals of the CPA, which calls for a policy “to introduce a scientific land reforms program[] by ending feudal land ownership”³⁸⁷ and to adopt policies “to provide land and other economic and social security to the economically backward classes including landless, bonded laborers and pastoral farmers.”³⁸⁸ The CPA also encourages equitable redistribution of land,³⁸⁹ which is in part echoed by the Interim Constitution’s provision committing the state to pay compensation for compulsory acquisition of property for public purposes, and commits to “doing away with feudal land ownership.”³⁹⁰

The government has also created a Three-Year Interim Plan that defines scientific land reform and lists twenty broad targets, including the establishment of a High Level Land Commission to work toward land reform, grant a 50% discount on transaction fees when land is purchased by women or other disadvantaged group members, and fully digitize the land certificate system in order to have a more accurate record of land plots.³⁹¹ Moreover, the 2008/09 national budget commits to funding various land

384. See CPA, *supra* note 34, art. 7.5.1.

385. Tafadzwa Pasipanodya, *A Deeper Justice: Economic and Social Justice as Transitional Justice in Nepal*, 2 INT’L J. TRANSITIONAL JUST. 378, 396 (2008).

386. CPA, *supra* note 34, art. 3.1.

387. *Id.* art. 3.7.

388. *Id.* art. 3.10.

389. See *id.*

390. WILY ET AL., *supra* note 26, at 108.

391. See *id.*

reform initiatives, including a program to effectively free and rehabilitate bonded laborers. It also creates a nationwide record of public and government land and the computerization of land registration.³⁹² The 2010/11 budget further allows for a 30% tax exemption on the registration of land when transferring ownership to women in rural areas.³⁹³ But the government has made no mention of ceilings or redistribution within the private land-holding sector. Those who leave their land idle will see it subject to taxation, which encourages them to sell to those who can afford to purchase. Thus, this land will likely remain beyond the reach of the poor and disenfranchised.

While hope exists and Kathmandu makes move towards land reform, perspective must be focused in order for this experience to represent the real change that has been lacking in the past. Jagat Basnet, the Executive Director of the Community Self-Reliance Centre, represents the voice of many marginalized and landless when he asserts that land reform is about economic development, freedom, and release from bondage and exploitation: "In Nepal, as in many other countries, the loss of land is the loss of livelihood, income, security, food, shelter, and dignity of people. Unless there is a more equitable distribution of economic and political powers, the interest of the poorest of the poor will not be represented."³⁹⁴ Working toward a meaningful solution requires the government to effectively address the historical vestiges of landlessness in Nepal, which are rooted in discriminatory policies and unfair benefit allocations, and invest in the rehabilitation of bonded laborers and effective redistribution of land to the landless. In a country where land holds the power of economic freedom and social advancement, comprehensive and responsible land reform is essential toward securing the human rights of all Nepal's peoples.³⁹⁵

392. See Bhattarai, *supra* note 133, at 17.

393. See Surendra Pandey, Finance Minister, Public Statement on Income and Expenditure of Fiscal Year 2010–11 (Nov. 20, 2010), *available at* http://www.mof.gov.np/publication/speech/2010_1/index.php#.

394. Jagat Basnet, Cmty. Self-Reliance Ctr., Land Reform in Nepal (2006), *available at* http://www.landcoalition.org/pdf/06nl_art_cscc.pdf.

395. The government of Nepal is planning a new census in 2011. See *Draft Census Questionnaires*, NAT'L POPULATION & HOUSING CENSUS 2011, http://www.census.gov.np/index.php?option=com_content&view=article&id=26&Itemid=2 (last visited Nov. 20, 2010). It will be crucial for the government to gather additional information about landholdings in order to effectively address the many problems related to access to land.

Land reform remains a politically sensitive topic in Nepal³⁹⁶ because changes to the land tenure system impact the economic and political power base centered in Kathmandu. The tenuous political compromise in the central government that involves political parties with widely varying views on how land reform should move forward keeps the discussion at a standstill. The documents adopted after the conflict, while strong starting points, are anything but specific and therefore leave little room for requiring a next step.

A High-Level Land Reform Commission was constituted in December 2008,³⁹⁷ but few have hopes that it will be able to call for significant reforms, and the Commission itself has already undergone a number of personnel changes. The current High-Level Land Reform Commission was initially led by Haribol Gajurel, a Maoist leader with almost no background in land reform.³⁹⁸ Following political disruptions beginning in the summer of 2009, the reform commission's chair and all but one commissioner were replaced after they resigned or were removed.³⁹⁹ The commission has since resumed its work,

Questions about how much land is currently held should be clarified to address land certificate holders and others.

396. Politicians from different political parties, government actors, and international and domestic NGOs agree that land reform is one of the most difficult things for Nepal today, because it is so highly politicized. *See, e.g.*, Interview with Jagat Basnet, *supra* note 211; Interview with Mirolam Giri, *supra* note 211; Interview with Ram Chandra Dhatal, *supra* note 275; Interview with Yagya Pakhore, *supra* note 273; Interview with Keshav Badal, *supra* note 212. One of the more controversial issues continues to be how to reform the land ceiling and the extent to which compensation should be given to landlords whose land may be taken as part of a redistribution scheme. *See* Interview with Jagat Basnet, *supra* note 211. Parties and other actors disagree about whether compensation should be provided to landlords at all. *See id.* Redistribution schemes that include redistribution of privately-held land are resisted by some politicians as well as, unsurprisingly, landlords themselves. *See* Interview with Ram Chandra Dhatal, *supra* note 275; Interview with Mahendra B. Munankami, Landowner, in Kathmandu, Nepal (May 18, 2009). For more about land redistribution programs that have been considered in Nepal, *see* WILY ET AL., *supra* note 26, at 98–109, 150–51.

397. *Government Forms Land Reform Commission*, NEPALNEWS.COM (Dec. 10 2008), <http://www.nepalnews.com/archive/2008/dec/dec10/news11.php>.

398. *See* Interview with Jagat Basnet, *supra* note 211; Interview with Haribol Gajurel, in Kathmandu, Nepal (Mar. 14, 2009); *see also* *Government Forms Land Reform Commission*, *supra* note 397.

399. In July 2009, Minister for Land Reform and Management Dambar Shrestha called for Gajurel's resignation, and noted that he would reconstitute the commission. *See* *Land Reform Commission to Be Reconstituted*, NEPALNEWS.COM (July 25, 2009), <http://www.nepalnews.com/main/index.php/news-archive/2-political/596-land-reform-commission-to-be-reconstituted.html>.

surveying local communities and drafting recommendations. But the new commission is no improvement over the last: there is only one woman among its eleven members and only one landless Dalit. Six of the twelve members are seen as having pro-poor agendas, including the Chair, Ghanendra Basnet, but the other six are seen as interested in maintaining the status quo and protecting large landholdings.⁴⁰⁰ Other members are primarily drawn from past land reform commissions or political bodies. As a result, the commission has reached consensus on general principals of reform,⁴⁰¹ but baseline questions, including where to set a new land ceiling and how landless groups will be identified, remain contentious, and a report has yet to be issued.⁴⁰² Other government commitments, too, demand that land reform be enacted,⁴⁰³ but little has been implemented.

3. Transitional Justice and the International Community

Transitional-justice programs worldwide focus their concerns and programs on civil and political rights,⁴⁰⁴ chiefly by examining civil and political rights violations during a period of violence. This has generally been the case in Nepal, especially with those programs initiated by the international community. International transitional justice programs—constituted by the UN or provided by NGOs—move from region to region as conflicts end, providing advice and recommendations on what

400. See Interview with Jagat Deuja, Program Manager, CSRC, in Kathmandu, Nepal (Apr. 14, 2010).

401. In an interview in April 2010, the new Chair of the High Level Land Reform Commission said that consensus between the twelve members had been reached on the need to identify truly landless people, to provide for the purchase and distribution of *Guthi* (religious) land, to institute policies for the support of Dalits and other disenfranchised groups, and to provide for joint ownership of land between men and women. See *id.*

402. The High-Level Land Reform Commission Chair said he would not provide details about nonconsensus issues, but indicated the most contentious among these was compensation for land to be redistributed. See *id.* Jagat Basnet of CSRC confirmed that this was holding up the release of a report, as well as programs to address the problems for unregistered tenants. See Interview with Jagat Basnet, *supra* note 211.

403. These include, for instance, the Common Minimum Programme of the National Consensus Government. Wily notes the specifics of the August 2008 Common Minimum Programme as instituting a Land Reforms Commission, waiving certain debts, improving access to land for landless and tenants, and compensating persons who lost property during the conflict. WILY ET AL., *supra* note 26, at 108.

404. Louise Arbour, *Economic and Social Justice for Societies in Transition*, 40 N.Y.U. J. INT'L L. & POL. 1, 5 (2007).

instruments to adopt. These recommendations range from prosecutions,⁴⁰⁵ to truth commissions, vetting and lustration systems, and reparations programs.⁴⁰⁶ The attention has been focused on political change and restructuring even though many of the programs are well-suited to economic considerations.⁴⁰⁷

Recognizing the disconnect between the causes and consequences of conflict on the one hand and the emphasis in current post-conflict models on civil and political rights on the other, some practitioners now suggest the need for a “holistic” theory and practice of justice.⁴⁰⁸ Incorporating economic,

405. In some cases, prosecutions may be necessary under international law to ensure accountability for certain crimes, including genocide. However, there may also be situations in which countries can and should legitimately abstain from prosecutions. Indeed, an unyielding preference for prosecutions fails to take into account the numerous needs of a society in transition that has been torn apart by violence and terror. Paul van Zyl offers two legitimate reasons post-conflict successor government may forgo prosecutions: where security forces of the previous regime are so powerful that an attempt to prosecute them will lead to blocking the transition to democracy, and where there are insurmountable practical difficulties. Paul van Zyl, *Justice without Punishment: Guaranteeing Human Rights in Transitional Societies*, in LOOKING BACK, REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 42, 43 (Charles Villa-Vicencio & Wilhelm Verwoerd, eds., 2000).

406. See PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 11-14 (2001).

407. See, e.g., Pasipanodya, *supra* note 385, at 389-94. Transitional justice mechanisms often fail to incorporate economic concerns as a result of their mandates, which “frequently ignore structural economic factors.” Zinaida Miller, *Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice*, 2 INT’L J. TRANSITIONAL JUST. 266, 275 (2008). Even where mechanisms have been provided with the mandate to consider economic concerns and exclusion, their end result (usually a report) tends to remain unspecific. *Id.* at 277-78. The only mechanism that is self-consciously geared towards economic concerns are reparations programs, but those programs are in any case based on ICCPR violations.

408. Authors have argued that a deeper justice that provides for holistic societal healing will include stronger gender concerns as well as socio-economic rights. Louise Arbour, former High Commissioner for Human Rights, has emphasized that “holistic” justice incorporates civil and political as well as economic and social understandings of wrongs and accountability. She argues that including economic, social, and cultural rights in transitional justice models will provide a “fully integrated vision of human rights as key for ensuring real security in a post-conflict setting.” Arbour, *supra* note 404, at 7-8. Other authors have also argued that traditional transitional justice models do not fully incorporate gender concerns. The failure to include women’s views, for instance, can result in an “impoverished understanding of peace and security that focuses on militarism and power supported by force” and “undermine a sense of societal belonging.” Christine Chinkin, *Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women* 10 (Nov. 10-13, 2003) (paper presented at the UN Division for the Advancement of Women Expert Group Meeting), available at <http://www.un.org/womenwatch/daw/egm/peace2003/reports/BPChinkin.PDF>; see

cultural, and social rights concerns ensures that transitional justice will “reach to—but also beyond—the crimes and abuses committed during the conflict that led to the transition, and it must address the human rights violations that pre-dated the conflict and caused or contributed to it.”⁴⁰⁹ This approach would ensure that, in the aftermath of conflict, economic, cultural, and social rights becomes a focus of the work of the transitional government as well as of international actors.

Nepal has adopted two primary transitional mechanisms: the Truth and Reconciliation Commission (“TRC”) and a disappearances commission. The CPA itself called for the formation of a Truth and Reconciliation Commission “to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliations.”⁴¹⁰ In July 2007, the release of the draft bill for the TRC was met with harsh criticisms from the United Nations and international NGOs. While these criticisms rightly focused on serious flaws in the bill,⁴¹¹ they largely failed to criticize the bill for a restrictive thematic mandate that did not include economic justice.⁴¹² International pressure led the government to announce plans to form a Commission on Disappearances in July 2007,⁴¹³ and a draft bill for disappearances was made public in

also Fionnuala NíAoláin, *Women, Security and the Patriarchy of Internationalized Transitional Justice* 2 (U. of Minn. Law Sch. Legal Studies Research Paper Series No. 08-40, 2008), available at <http://ssrn.com/abstract=1279622> (arguing that transitional justice models and processes that focus on legal accountability exclude women); Christine Bell & Catherine O'Rourke, *Does Feminism Need a Theory of Transitional Justice: An Introductory Essay*, 1 INT'L J. TRANSITIONAL JUST. 23, 43 (2007) (demonstrating that including women in transitional justice processes will make justice more responsive to the needs of women, including socio-economic needs).

409. Arbour, *supra* note 404, at 3.

410. CPA, *supra* note 34, art. 5.2.5.

411. These criticisms included concerns about a controversial amnesty provision and about the independence of the commission, among others. See, e.g., INT'L CTR. FOR TRANSITIONAL JUSTICE, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE COMMENTS ON THE NEPALI TRUTH AND RECONCILIATION DRAFT BILL PUBLISHED IN AUGUST 2007, at 1 (2007).

412. This failure may reflect the view that truth commissions are not designed to deal with economic and social justice, although Louise Arbour argues that “truth commissions lend themselves particularly well to the investigation and protection of economic, social, and cultural rights.” Arbour, *supra* note 404, at 14.

413. See Karon Cochran-Budhathoki & Scott Worden, *Transitional Justice in Nepal: A Look at the International Experience of Truth Commissions*, USIPEACE BRIEFING (U.S. Inst. of

November 2008. This bill has also been widely criticized, fundamentally because of its ambiguous definition of “disappearance.”⁴¹⁴ This lack of clarity may provide loopholes for perpetrators and jeopardize its independence.⁴¹⁵

International aid, through NGOs and other international organizations, has been a critical part of the Nepali development effort since the *panchayat* period. Results of such aid on inequality have been mixed. Alexandra Geiser notes that “over the decades, mainly the elites profited from foreign aid, so that the gap between them and the poor and marginalized increased even further. . . . In most cases, the gap between the international agencies and the beneficiaries is enormous.”⁴¹⁶ One potential reason for this failure to address inequality is a lack of information about the conditions of vulnerable populations in the rural areas due to the fact that most international organizations are based in Kathmandu. Other scholars, though noting the ongoing problem of inequality and discrimination in development projects, feel that “since the ceasefire in 2002, the donor community has become increasingly sensitive to the effectiveness and the impact of the projects they implement,” emphasizing conflict-sensitive programming and the development of democratic processes.⁴¹⁷

III. LAND IN THE INTERNATIONAL LEGAL FRAMEWORK

*“The soil is the great connector of lives, the source and destination of all.”*⁴¹⁸

A. A Rights-Based Approach to Land

Access to and control over land affects a broad range of human rights. Without land and its resources, secure housing, adequate food and water, and health, as well as interrelated civil

Peace, Washington, D.C.), Sept. 2007, at 3–4, available at http://www.usip.org/files/resources/transitional_justice_nepal.pdf.

414. See INT’L CTR. FOR TRANSITIONAL JUSTICE, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE (ICTJ) COMMENTS ON NEPAL’S DISAPPEARANCES ORDINANCE (2009).

415. See *id.*

416. Geiser, *supra* note 65, at 15.

417. *Id.*

418. WENDELL BERRY, THE UNSETTLING OF AMERICA 86 (1977).

and political rights, are threatened. Land ownership can be a vital source of capital and opens up personal credit options.⁴¹⁹ Yet, beyond the potential for a higher income, land access can provide a “valuable safety net” of shelter, food, and income, particularly in times of serious hardship.⁴²⁰ Land impacts all aspects of human life. In rural areas, the link between land and livelihood is direct; this link in urban and developed areas is less obvious, where provision of the resources based in land is delivered through markets and other channels, but is still tangible. For rural peoples in particular, land can have a stark effect because it is the source of their livelihood. It is primarily in these settings, moreover, that millions of individuals who toil the land do not enjoy rights to it.⁴²¹

Landlessness impacts both individual rights to food, housing, water, health, and work, and wider social stability and economic development. On both the international and national level, policies and programs concentrating on land reform and land access have been viewed primarily through an economic development lens, rather than a rights-based lens. There are significant exceptions to this rule,⁴²² but even where rights language has been embraced, it is typically restricted to civil or political rights and rights against arbitrary interference, as opposed to economic or social (“positive”) rights to food, housing, and resources. Economic development policies aimed at reducing landlessness can certainly aid in reducing homelessness, hunger, and other negative consequences of landlessness. However, without an integrated human rights perspective, the core of the rights at issue—to whom they are owed and who is obligated to provide them—is lost. As Smita Narula has highlighted in the context of the right to food, “Though economic growth and increased food production are mutually

419. See Alain de Janvry, *Access to Land and Land Policy Reforms*, in *ACCESS TO LAND, RURAL POVERTY, AND PUBLIC ACTION* 1, 17 (Alain de Janvry et al. eds., 2001).

420. COHRE, *supra* note 2, at 4; see de Janvry, *supra* note 419, at 5.

421. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context, *Promotion and Protection of all Human Rights, Civil, Political, Economic Social and Cultural Rights, Including the Right to Development*, Human Rights Council, ¶ 67, U.N. Doc. A/HRC/7/16 (Feb. 13, 2008) (by Miloon Kothari) [hereinafter 2008 Report of the Special Rapporteur on Adequate Housing].

422. See, e.g., COMM’N ON LEGAL EMPOWERMENT OF THE POOR, *MAKING THE LAW WORK FOR EVERYONE* 2 (2008).

reinforcing, they are not in and of themselves sufficient to ensure food security if economic growth bypasses poor and vulnerable populations.”⁴²³ A rights-based approach affirms that individuals are universally entitled to fundamental human rights without discrimination. It also provides a basis on which to analyze, review, and monitor policies and programs already in place.⁴²⁴

Global actors, addressing security, economic development and human rights, have begun to consider the role of land and access to land with increasing frequency.⁴²⁵ Recently, there has been increasing interest in the intersection between human rights and the global land grab.⁴²⁶ The components of a rights-based approach to land, however, have not yet been articulated.

Land is referenced in numerous international policy documents, yet its place in the international human rights framework remains unclear. Rights to land have been laid out in the legal framework relating to the rights of indigenous peoples and, to a more limited extent, women. General principles in international law also provide protections that relate to access to

423. Smita Narula, *The Right to Food: Holding Global Actors Accountable under International Law* 5 (Ctr. For Human Rights and Global Justice, Working Paper No. 7, 2006).

424. Narula’s helpful discussion of the “economic vs. rights-based approaches” to food security is relevant in the context of land rights; as in the case of food security, global actors have adopted economic development policies without an adequate consideration of the human rights implications of land access. Narula notes that while an economic development approach is helpful, the rights-based approach cannot be dismissed:

A rights-based approach includes four essential elements: evaluating the claims of rights holders and the corresponding obligations of duty bearers; developing strategies to build the capacity of rights holders’ to claim their rights and of duty bearers to fulfill their obligations; monitoring and evaluating outcomes and processes using human rights principles and standards; and finally, incorporating the recommendations of international human rights bodies to inform each step of the process.

Id. at 6.

425. See, e.g., U.N. Conference on Human Settlements, Vancouver, Can., May 31–June 11, 1976, *The Vancouver Declaration on Human Settlements*, ¶ II.10, U.N. Doc. A/CONF.70/15 (June 11, 1976); FAO, VOLUNTARY GUIDELINES TO SUPPORT THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY ¶ 8.10 (2004) [hereinafter FAO VOLUNTARY GUIDELINES].

426. See CHRGI, FOREIGN LAND DEALS AND HUMAN RIGHTS: CASE STUDIES ON AGRICULTURAL AND BIOFUEL INVESTMENT 4 (2010), available at <http://www.chrgj.org/projects/docs/landreport.pdf>; Special Rapporteur on the Right to Food, *Interim Rep. of the Special Rapporteur on the Right to Food*, U.N. Doc. A/65/281 (Aug. 11, 2010) (by Olivier De Schutter) [hereinafter 2010 Report of the Special Rapporteur on the Right to Food].

land (e.g., equality and nondiscrimination in ownership and inheritance), and access to ownership, control and use of land, and is a prerequisite for the realization of other fundamental rights, including the rights to housing, food, water, and work. To date, however, there has been no comprehensive articulation of the right to land. A substantive basis for such a right may be found, however, in the Universal Declaration of Human Rights,⁴²⁷ in the core human rights treaties, and in additional declarations and international documents on a variety of substantive human rights concerns.

This Part examines the existing international framework relating to land, “land rights” and the “right to land.” It considers the normative gap in the international framework that gives rise to questions about the actual obligations imposed by the international covenants relating to land. The basis for a right to land comes both from its role in realizing other related rights (e.g., access to land as a precursor to the realization of the right to housing) and its independent quality as being indispensable for leading a life in human dignity. Until a “right to land” is adopted, however, the relevant provisions of the covenants examined below continue to impose obligations.

B. *The Right to Land: A Normative Gap*

Despite the lack of explicit mention of the right to land, the international framework, from human rights treaties to declarations and analyses, all include multiple references to land and specifically to “land rights.” These references range from land as a necessary resource for underlying rights, to land rights protections for specific groups, to related international property rights, and to policy calls to heighten protections for land rights as a means of promoting development.

The gap between references to land rights and the actual standards in place becomes stark in light of the growing calls in international documents and by international bodies for states to improve access to land to facilitate human rights protection. Although there are a few basic provisions explicitly affirming that land rights are necessarily linked to human rights, including

427. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

housing, they are vague in their scope and application.⁴²⁸ International bodies, however, continue to call on states to increase access to land.

The CESCR, in examining the content of the right to housing, has stated that in many states, “increasing access to land by landless or impoverished segments of the society should constitute a central policy goal”⁴²⁹ and that “[d]iscernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.”⁴³⁰ The Special Rapporteur on the Right to Housing has also emphasized that land reform is a tool that can be directed toward improving equitable distribution of development opportunities and benefits.⁴³¹ These calls are also borne out by the work the CESCR has done in reviewing the reports of states parties.

The language of the ICESCR itself also implicitly recognizes that the means of utilizing resources has an impact on the right to food. Thus, it directs states parties to “improve methods of production, conservation and distribution of food . . . by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.”⁴³² The CESCR thus recognizes that land is not only a resource for people in rural areas in the immediate sense but that it also provides access to food by people who do not live on rural land. It notes that, for food to be available, one must be able to access food “directly from productive land or other natural resources, or for well functioning distribution, processing

428. See, e.g., U.N. Conference on Human Settlements, Vancouver, Can., May 31-June 11, 1976, *The Vancouver Action Plan*, ¶ D.1, U.N. Doc. A/CONF.70/15 (June 11, 1976). The Vancouver Action Plan is not frequently referenced by states, and its principles, calling for land use “in the interest of society as a whole,” have not been taken up by subsequent conferences on human settlements.

429. CESCR, General Comment No. 4: The Right to Adequate Housing, (Art. 11(1)), 6th Sess., ¶ 8(e), U.N. Doc. E/1992/23 (1991).

430. *Id.*

431. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Comm’n on Human Rights, ¶ 35, U.N. Doc. E/CN.4/2002/59 (Mar. 1, 2002) (by Miloon Kothari) [hereinafter 2002 Report of the Special Rapporteur on Adequate Housing].

432. ICESCR, *supra* note 36, art. 11(2)(a).

and market systems that can move food from the site of production to where it is needed in accordance with demand.”⁴³³

Equitable access to land is repeatedly identified as essential in ensuring freedom from hunger, and the CESCR has suggested that “[s]ocially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special program[s].” The Food and Agriculture Organization’s (“FAO”) Voluntary Guidelines also urge states to “design and implement program[s] that include different mechanisms of access and appropriate use of agricultural land directed to the poorest populations.”⁴³⁴ These kinds of proactive steps “could mean improving employment prospects, by introducing an agrarian reform program[] for landless groups or promoting alternative employment opportunities,”⁴³⁵ and has emphasized that “[a]ccess to land and agrarian reform must form a key part of the right to food.”⁴³⁶ The focus on land access and the right to food gains new urgency in light of the ongoing global food crisis.⁴³⁷

Several of the UN special mechanisms have called attention to the need to clarify the scope of land rights and the lack of adequate protections despite the obvious link to interrelated human rights. As former Special Rapporteur on Adequate Housing Miloon Kothari noted, the “lack of legal recognition of the right to land” contributes to failure to address the underlying

433. CESCR, General Comment No. 12: Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, 20th Sess., ¶ 12, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter General Comment No. 12].

434. FAO VOLUNTARY GUIDELINES, *supra* note 425, ¶ 8.7.

435. Special Rapporteur on the Right to Food, *Preliminary Rep. of the Special Rapporteur of the Commission on Human Rights on the Right to Food*, transmitted by Note of the Secretary-General, ¶ 29, U.N. Doc. A/56/210 (July 23, 2001) [hereinafter Preliminary Report of the Special Rapporteur on the Right to Food].

436. Special Rapporteur on the Right to Food, *Report of the Special Rapporteur on the Right to Food*, transmitted by Note of the Secretary-General, ¶ 30, U.N. Doc. A/57/356 (Aug. 27, 2002) (by Jean Ziegler) [hereinafter 2002 Report of the Special Rapporteur on the Right to Food].

437. See Special Rapporteur on the Right to Food, *Report of the Special Rapporteur on the Right to Food: Building Resilience: A Human Rights Framework for World Food and Nutrition Security*, Human Rights Council, ¶¶ 20–22, U.N. Doc. A/HRC/9/23 (Sept. 8, 2008) (by Olivier De Schutter) [hereinafter 2008 Report of the Special Rapporteur on the Right to Food].

causes of landlessness.⁴³⁸ He strongly believes that the Human Rights Council ("Council") should consider devoting attention to the question of the human right to land and should conduct studies in this regard that build on the work of organized peasant and indigenous peoples' movements. The Council is ideally placed to ensure the recognition in international human rights law of land as a human right. Land as a cross-cutting issue could also be the subject of a joint analysis by concerned mandate holders, including on the rights of indigenous peoples, violence against women, food, and housing.⁴³⁹

The Special Rapporteur on Adequate Housing repeated his call a year later, stating that the Council should "[c]onsider the relationship between the right to land and congruent human rights and their implementation, in particular in regard to adequate housing and the right to food and work as a means to combat poverty, discrimination, violence, evictions and displacement."⁴⁴⁰ Similarly, the former Special Rapporteur on the Right to Food, believing that "access to land is one of the key elements necessary for eradicating hunger in the world,"⁴⁴¹ has argued:

Meeting the right to food is an obligation of Governments, and the Special Rapporteur believes that the right to land, and transformative and genuinely redistributive land reform, must be a fundamental part of Government obligations under the International Covenant on Economic, Social and Cultural Rights to meet the right to food.⁴⁴²

The current Special Rapporteur on the Right to Food, Olivier de Schutter, has maintained this focus on promoting access to land, though with less of an emphasis on the potentially controversial call for redistributive land reform, focusing instead

438. See 2008 Report of the Special Rapporteur on Adequate Housing, *supra* note 421, ¶ 68.

439. See Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Human Rights Council, *Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Human Rights Council, ¶ 31, U.N. Doc. A/HRC/4/18 (Feb. 5, 2007) (by Miloon Kothari) [hereinafter 2007 Report of the Special Rapporteur on Adequate Housing].

440. 2008 Report of the Special Rapporteur on the Right to Housing, *supra* note 422, ¶ 104(b).

441. 2002 Report of the Special Rapporteur on the Right to Food, *supra* note 436, ¶ 22.

442. *Id.* ¶ 42.

on promoting secure tenure rights for farmers as a means to facilitating the right to food.⁴⁴³ In that regard, in 2009, he released a set of principles related to large-scale land acquisitions and leases and their impact on the right to food.⁴⁴⁴ The special rapporteur has submitted a report to the UN General Assembly on the impact that access to land has on the right to food, articulating a number of specific recommendations that focus on ensuring secure tenure. The report suggests that while security of tenure is critical, a titling program may not be the most appropriate way to achieve it. Rather, strengthening customary land tenure systems and strengthening tenancy laws may improve protections for land users.⁴⁴⁵

Civil society and other international bodies have also identified the normative gap in international law and called for definition and greater clarity.⁴⁴⁶ Whereas international legal instruments do not yet adequately provide for the crucial importance of land access, it is clear that land is a fundamental element in access to numerous international human rights. Each

443. See, e.g., *id.* ¶¶ 20–22; 2010 Report of the Special Rapporteur on the Right to Food, *supra* note 426, ¶ 20.

444. See Special Rapporteur on the Right to Food, *Large-Scale Land Acquisitions and Leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, Annex, U.N. Doc. A/HRC/13/33/Add.3 (Dec. 28, 2009) (by Olivier De Schutter).

445. 2010 Report of the Special Rapporteur on the Right to Food, *supra* note 426, ¶ 42.

446. See, e.g., ECOSOC, High-Level Segment: Development Cooperation Forum, June 30–July 3, 2008, Draft Ministerial Declaration of the 2008 High-Level Segment of the Economic and Social Council: Implementing the Internationally Agreed Goals and Commitments in Regard to Sustainable Development, ¶ 28, U.N. Doc. E/2008/L.10 (July 3, 2008) (“We recognize the crucial importance of enhanced access of the rural poor, women and men, to productive assets, in particular land and water, and stress that priority attention should be given to the adoption of policies and the implementation of laws that guarantee well-defined and enforceable land- and water-use rights and promote legal security of tenure, while recognizing the existence of different national laws and/or systems of land access and tenure.”); U.N. Public-Private Alliance for Rural Development [UNPPA], *Ministerial Declaration: Promoting an Integrated Approach to Rural Development in Developing Countries for Poverty Eradication and Sustainable Development*, ¶ 24, U.N. Doc. A58/3/Rev.1 (July 3, 2003); Int’l Land Coalition, 2009 International Conference, Kathmandu, Nepal, Apr. 21–23, 2009, *Kathmandu Declaration: Securing Rights to Land for Peace and Food Security*, ¶ 2 (Apr. 23, 2009), available at http://www.landcoalition.org/pdf/09_Katmandu_declaration_E.pdf (“Gaining secure access to land and natural resources is central to their enjoyment of full citizenship and wider human rights, especially the right to food. Land issues shape social, economic and political relations, and are a concern for everyone.”).

of these rights remains the relevant sources of obligation where considering the human rights challenges of landless populations.

C. *Relevant Provisions on Land in International Human Rights Law*

Human dignity is at the core of international human rights law. It is the constant that links the various treaties, declarations, and documents in the development of international human rights law. The *chapeau* of the United Nations Charter, which affirms the fundamental place of the dignity of the human person in the international framework, forms the basis for the core international treaties, which codify the rights that flow from it. Subsequent declarations and international documents further elaborate international legal standards with respect to human rights, all directing states to promote conditions in which individuals may live in dignity and free from want.⁴⁴⁷ A resource for housing, food, water, services, and materials, land is a critical element to the realization of human dignity and human rights. Each of these rights, then, is relevant in considering the plight of landless groups.

The rights for which land is an enabling resource have long been part of the international human rights framework, and while there is no codified right to land, land is frequently referenced in the international treaties, in declarations, and in authoritative analyses of states' obligations. This is especially true for those rights in the International Covenant on Economic, Social and Cultural Rights, including the rights to housing, food, water, health, and work.⁴⁴⁸ This Section will examine the necessity of land for the underlying human rights that form the human rights framework applicable to landless groups. It will also consider the extent to which existing rights to land per se have been identified in international law.

1. The Right to Property in International Law

As a form of real property, rights in property—"the right to possess, use, and enjoy a determinate thing"⁴⁴⁹—merit brief attention here. The right to property is, to some extent, at odds

447. See, e.g., U.N. Charter.

448. See *supra* notes 504–18; see also ICESCR, *supra* note 36, arts. 6, 11, 12.

449. BLACK'S LAW DICTIONARY 1232 (7th ed. 1999).

with stronger provisions guaranteeing access to land.⁴⁵⁰ Fears of redistribution of land and hints of socialism have restricted international property rights protections to protections for privacy and family as understood in the context of a given state, rather than developing universal standards that may provide a stronger basis for understanding land rights.⁴⁵¹ While property rights are fundamental to Western legal systems and have long been guaranteed in the constitutions and laws of Western democracies,⁴⁵² inclusion of the right to property at the international level has been far more controversial.

The UDHR, the ICCPR, and the ICESCR prohibits discrimination based on property status.⁴⁵³ The CESCR has, in discussing nondiscrimination in economic, social and cultural rights, stated that property status in this context "is a broad concept and includes real property (e.g., land ownership or tenure) and personal property."⁴⁵⁴ The UDHR further protects the "right to own property." Article 17 states: "(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property."⁴⁵⁵

The inclusion of a right to property in the UDHR was the source of some controversy during deliberation over its text.⁴⁵⁶ The text as ultimately adopted remained far vaguer than the language that had been proposed by many of the countries involved in the deliberation,⁴⁵⁷ which ranged from a provision

450. See, e.g., 2002 Report of the Special Rapporteur on the Right to Food, *supra* note 436, ¶ 32.

451. See, e.g., Catarina Krause & Gudmundur Alfredsson, *Article 17, in THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT* 361–64 (Gudmundur Alfredsson & Asbjørn Eide eds., 1999).

452. Even on a domestic level, however, debates over the structure and protection of property rights have been heated, particularly between political parties within a country. See generally THEO R. G. VAN BANNING, *THE HUMAN RIGHT TO PROPERTY* 3–5 (2002).

453. See UDHR, *supra* note 427, art. 2; ICCPR, *supra* note 36, art. 2; ICESCR, *supra* note 36, art. 2.

454. CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 42nd Sess., ¶ 25, U.N. Doc. E/C.12/GC/20 (July 2, 2009) [hereinafter General Comment No. 20].

455. UDHR, *supra* note 427, art. 17.

456. See Krause & Alfredsson, *supra* note 451, at 363.

457. See *id.* at 363–64.

that prohibited the taking of property “except for public welfare and with just compensation,”⁴⁵⁸ to one which protected “the right to own property in conformity with the laws of the State in which such property is located,”⁴⁵⁹ to language tracking that found in the American Declaration of the Rights and Duties of Man, stating, “Everyone has the right to own such property as meets the essential needs of decent living, that helps to maintain the dignity of the individual and of the home, and shall not be arbitrarily deprived of it.”⁴⁶⁰ One recent effort by an NGO attempts to clarify some of the ways that property relates to human rights.⁴⁶¹

The final text is “broad and comprehensive”⁴⁶² and is generally considered to fall among the civil and political rights rather than the economic, social, and cultural rights of the UDHR. Article 17 “does not stand apart from the other rights in the declaration. The entire section on ‘other’ social, economic, and cultural rights places property rights in the much larger context of what Alan Gewirth has called ‘the community of rights.’”⁴⁶³ Article 17 is thus understood to protect liberal property rights rather than an economic or redistributive right.⁴⁶⁴

Subsequent international human rights treaties do not include the right to property in part because agreement could

458. ECOSOC, Drafting Comm. on an Int'l Bill of Human Rights, *Rep. of the Drafting Committee to the Commission on Human Rights*, Comm'n on Human Rights, at 76–77, U.N. Doc. E/CN.4/21, Annex F (July 1, 1947).

459. Krause & Alfredsson, *supra* note 451, at 362 (citing U.N. Comm'n on Human Rights, *Report of the Commission on Human Rights*, ECOSOC, at 16, U.N. Doc. E/600, Annex A (Dec. 17, 1947)).

460. Compare ECOSOC, Drafting Comm. of the Comm'n on Human Rights, *Rep. of the Drafting Committee to the Commission on Human Rights*, at 8, U.N. Doc. E/CN.4/95, Annex A (May 21, 1948), with American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, 9th Int'l Conference of American States, art. 23, O.A.S. Official Record, OEA/Ser.L/V/II.23 (May 12, 1948).

461. See generally CHRISTOPHE GOLAY & IOANA CISMAS, RIGHTS & DEMOCRACY, LEGAL OPINION: THE RIGHT TO PROPERTY FROM A HUMAN RIGHTS PERSPECTIVE (2010), available at http://www.dd-rd.ca/site/_PDF/publications/humanright-en.pdf.

462. Krause & Alfredsson, *supra* note 451, at 364.

463. JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 155 (1999) (quoting ALAN GEWIRTH, THE COMMUNITY OF RIGHTS (1996)).

464. *Id.* at 154.

not be met on language,⁴⁶⁵ and, as such, there is no universal agreement as to the scope of UDHR Article 17.⁴⁶⁶ The ICCPR includes protections against arbitrary interference of “privacy, family, or correspondence,” and against “unlawful attacks on his honour and reputation,” and states that everyone has “the right to protection of the law against such interference or attacks.”⁴⁶⁷ General Comment No. 16 of the UN Human Rights Committee emphasizes the obligation to adopt laws and regulations protecting against unlawful and arbitrary interference in the context of investigations,⁴⁶⁸ and provides ample room for the adoption of state practice with respect to the meaning of “privacy” and “family,” for example.⁴⁶⁹ In the examination of complaints pertaining to Article 17, some Committee members have in fact noted that Article 17 has provided little protection.⁴⁷⁰ Yet Article 17 is an important touchstone for the related rights to housing and tenure security in the ICESCR. The ICCPR and ICESCR and their General Comments overlap frequently, the rights in the ICCPR being “a very important dimension in defining the right to adequate housing” which “cannot be viewed in isolation from other human rights,”⁴⁷¹ and the CESCR notes that the ICCPR’s provision to provide an “effective remedy” for violations of rights includes “adequate compensation for any

465. However, subsequent treaties emphasize the need for equality and nondiscrimination in the right to own property. *See, e.g.*, CERD, *supra* note 36, art. 5(v); CEDAW, *supra* note 36, arts. 15(2), 16(1).

466. At the regional level, protections on the right to property are included in the human rights conventions. *See* Protocol to the Convention for the Protection of Fundamental Rights and Freedoms, art. 1, Nov. 4, 1950, 213 U.N.T.S. 222; American Convention on Human Rights, art. 21, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; American Declaration of the Rights and Duties of Man, *supra* note 460; *see also* Krause & Alfredsson, *supra* note 451, at 366–71.

467. ICCPR, *supra* note 36, art. 17.

468. OHCHR, General Comment No. 16: Article 17 (Right to Privacy), the Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 32nd Sess., ¶ 1 (Apr. 8, 1988), *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I).

469. *Id.* ¶¶ 5, 7.

470. *See, e.g.*, Toonen v. Australia, No. 488/1992, U.N. Human Rights Comm., Appendix: Individual Opinion Submitted by Mr. Bertil Wennergren, U.N. Doc. CCPR/C/50/D/488/1992, (Apr. 4, 1994) (disagreeing with the Committee and stating that “[u]nlike the majority of the articles in the Covenant, article 17 does not establish any true right or freedom”).

471. CESCR, *supra* note 429, ¶ 9.

property.”⁴⁷² These links between the two covenants are consistent regarding the indivisibility of human rights.⁴⁷³

While property rights protections have not been further codified in international human rights documents,⁴⁷⁴ international humanitarian law (“IHL”) does provide some protections to property in the context of armed conflict.⁴⁷⁵ Before, during, and after an armed conflict, property concerns frequently emerge,⁴⁷⁶ and indeed, control of real property is

472. CESCR, General Comment No. 7, The Right to Adequate Housing (Art. 11.1 of the Covenant): Forced Evictions, ¶ 14, U.N. Doc. E/C.12/1997/4 (1997).

473. See, e.g., World Conference on Human Rights, *supra* note 44 (“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.”).

474. Some scholars have argued that the right to property ought to be codified as a human right on an international level, classifying the right as both a “civil” and “social” right. See VAN BANNING, *supra* note 452, at 169–70, 194.

475. Nepal ratified the four Geneva Conventions in 1964. It was not an original signatory of the Hague Convention, but the framework is understood to be customary international law. See, e.g., Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 168, ¶ 217 (Dec. 19) (“[T]he Court reiterates that ‘the provisions of the Hague Regulations have become part of customary law . . .’”). A full consideration of the international humanitarian laws protecting property is beyond the scope of this Report. Further research and consideration of the impact that these laws may have on the international human rights framework as it relates to property and land rights may be helpful, however, beginning with key protections in the Geneva Conventions. See generally Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention (I)]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention (IV)]; Hague Convention (IV) Respecting the Laws and Customs of War on Land, with Annex Regulations, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277 [hereinafter Hague Convention]. Additional provisions in documents not ratified by Nepal also contain protections relevant for an analysis of protections for housing, land, and property during periods of conflict. See, e.g., Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), June 8, 1977, 1125 U.N.T.S. 609; Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

476. See, e.g., Scott Leckie, *United Nations Peace Operations and Housing, Land, and Property Rights in Post-Conflict Settings: From Neglect to Tentative Embrace*, in HOUSING, LAND, AND PROPERTY RIGHTS IN POST-CONFLICT UNITED NATIONS AND OTHER PEACE OPERATIONS: A COMPARATIVE SURVEY AND PROPOSAL FOR REFORM 5–6 (Scott Leckie ed.,

often the cause of conflict.⁴⁷⁷ Binding international law governing property protections during armed conflict⁴⁷⁸ include prohibitions against destruction of an enemy's property;⁴⁷⁹ arbitrary seizure; "reprisals" against property; and plunder and pillage.⁴⁸⁰ Each of these, however, is limited by caveats that allow for "military necessity" or the "necessities of war,"⁴⁸¹ and these caveats have been strictly applied in cases before international criminal tribunals⁴⁸² and the International Court of Justice.⁴⁸³

2009) ("No conflict, notwithstanding its nature, or how small or short in duration it may be, is without some degree of crisis within the housing, land, and property spheres.").

477. See Oskar N.T. Thoms & James Ron, *Do Human Rights Violations Cause Internal Conflict?*, 29 HUM. RTS. Q. 674, 676 (2007) ("Discrimination and violations of social and economic rights function as underlying causes, creating the grievances and group identities that may, under some circumstances, motivate civil violence."); AGNÈS HURWITZ ET AL., HOUSING, LAND, PROPERTY AND CONFLICT MANAGEMENT: IDENTIFYING POLICY OPTIONS FOR RULE OF LAW PROGRAMMING 2 (2005), available at http://www.ipinst.org/media/pdf/publications/housing_land_property.pdf.

478. Originally, the Geneva Conventions were designed to distinguish between interstate and intrastate conflicts. All but one of the articles contained within the four conventions were intended specifically for international war. The only applicable provision for intrastate conflicts had been Common Article 3, but in recent years other provisions in the conventions have been applied to both international and internal armed conflicts. This was best illustrated within *Prosecutor v. Tadić* case at the International Criminal Tribunal for the Former Yugoslavia where, in an appeals decision, the Chamber found that the Security Council, when drafting the court's governing statute and providing it with jurisdiction over "grave breaches" of the Geneva Convention, was indifferent to the nature of the underlying conflict. Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 78 (Int'l Crim. Trib. for the Former Yugoslavia [ICTY] Oct. 2, 1995).

479. See Hague Convention, *supra* note 475, art. 23(g).

480. See Geneva Convention (IV), *supra* note 475, art. 33 ("Pillage is prohibited."); Hague Convention, *supra* note 475, art. 47 ("Pillage is formally forbidden."); see also Geneva Convention (IV), *supra* note 475, art. 33 ("Reprisals against protected persons and their property are prohibited.").

481. See Geneva Convention (I), *supra* note 475, art. 50 ("military necessity"); Geneva Convention (IV), *supra* note 475, art. 147 ("military necessity"); Hague Convention, *supra* note 475, art. 23(g) ("necessities of war").

482. See, e.g., *Prosecutor v. Rajić*, Case No. IT-95-12-S, Sentencing Judgment (ICTY May 8, 2006); *Prosecutor v. Brdjanin*, Case No. IT-99-36-T, Judgment (ICTY Sept. 1, 2004); *Prosecutor v. Deronjic*, Case No. IT-02-61, Sentencing Judgment (ICTY Mar. 30, 2004); *Prosecutor v. Sjokić*, Case No. IT-01-42/1, Sentencing Judgment (ICTY Mar. 18, 2004); *Prosecutor v. Stakić*, Case No. IT-97-24, Judgment (ICTY July 31, 2003); *Prosecutor v. Naletilić & Martinović*, Case No. IT-98-34-T, Judgment (ICTY Mar. 31, 2003); *Prosecutor v. Todorović*, Case No. IT-95-9/1, Sentencing Judgment (ICTY July 31, 2001); *Prosecutor v. Kordić & Čerkez*, Case No. IT-95-14/2-T, Judgment (ICTY Feb. 26, 2001); *Prosecutor v. Blaškić*, Case No. IT-95-14-T, Judgment (ICTY Mar. 3, 2000).

483. See *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. 116, ¶ 206 (Dec. 19). The ICJ has also issued a nonbinding, advisory opinion on "extensive destruction." See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,

Property-rights questions also emerge in post-conflict settings, in which populations of internally displaced persons (“IDPs”) and refugees⁴⁸⁴ seek to return to housing, land, and property owned before conflict. Despite these sometimes overwhelming problems faced by post-conflict states, there has traditionally been a dearth of post-war protections for housing, land and property. There is an emerging “right to return,”⁴⁸⁵ which encompasses both the right to return to one’s property after conflict and the right of restitution of property. The right to return arises from the right to enter freely one’s country of origin,⁴⁸⁶ the right to adequate housing,⁴⁸⁷ the right to property

Advisory Opinion, 2004 I.C.J. 136, ¶ 132 (July 9) (finding that “the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention.”).

484. The Guiding Principles on Internal Displacement define internally displaced persons as:

[P]ersons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

Representative of the U.N. Secretary-General, *Human Rights, Mass Exoduses and Displaced Persons: Report of the Representative of the Secretary-General Addendum: Guiding Principles on Internal Displacement*, Annex ¶ 2, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) (by Francis M. Deng) [hereinafter Guiding Principles on Internal Displacement]. The 1951 Convention Relating to the Status of Refugees defines a “refugee” as any person who:

[O]wing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Convention Relating to the Status of Refugees, art. 1, Apr. 22, 1954, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

485. See Scott Leckie, *Housing and Property Issues for Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice*, 19 REFUGEE SURV. Q., no. 3, 2000, at 5, 9, 48–51.

486. This right is asserted in a number of provisions within international human rights instruments UDHR, *supra* note 427, art. 13(2) (“Everyone has the right to leave any country, including his own, and to return to his country.”); ICCPR, *supra* note 36, art. 12(4) (“No one shall be arbitrarily deprived of the right to enter his own country.”); CERD, *supra* note 36, art. 5(d)(ii) (noting the right “to leave any country, including one’s own, and to return to one’s country”).

487. See ICESCR, *supra* note 36, art. 11(1) (recognizing “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing

and to peaceful enjoyment of one's possessions,⁴⁸⁸ the right to be protected against forced evictions,⁴⁸⁹ the right to privacy and respect for the home,⁴⁹⁰ and the right to freedom of movement and to choose one's own residence.⁴⁹¹ UN bodies have affirmed that such a right exists in nonbinding resolutions⁴⁹² and interpretations,⁴⁹³ and more significantly, by empowering international criminal tribunals to order the return of property.⁴⁹⁴ Nonbinding documents, including the Guiding Principles on Internal Displacement and the Principles on Housing and Property Restitution for Refugees and Displaced Persons ("The Pinheiro Principles")⁴⁹⁵ also provide for restitution of property.⁴⁹⁶ The Pinheiro Principles explicitly

and housing, and to continuous improvement of living conditions."); UDHR, *supra* note 427, art. 25(1).

488. See UDHR, *supra* note 427, art. 17; CERD, *supra* note 36, art. 5(d)(v); CEDAW, *supra* note 36, art. 16(1)(h).

489. See ICESCR, *supra* note 36; General Comment No. 4, *supra* note 429 (stating that "forced evictions are *prima facie* incompatible with the provisions of the Covenant, and can only be justified in the most exceptional circumstances").

490. See ICCPR, *supra* note 36, art. 17.

491. See UDHR, *supra* note 427, art. 13; ICCPR, *supra* note 36, art. 12.

492. See ECOSOC, Sub-Comm'n on Prevention of Discrimination & Prot. of Minorities Res. 1998/26, Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons, 35th Sess., Aug. 26, 1998, ¶ 4, U.N. Doc. E/CN.4/Sub.2/RES/1998/26 (Aug. 26, 1998).

493. See Comm. on the Elimination of All Forms of Racial Discrimination General Recommendation XXII, Rep. of the Comm. on the Elimination of All Forms of Racial Discrimination, 49th Sess., Aug. 16, 1996, U.N. GAOR, 51st Sess., Supp. No. 18, A/51/18, at 126 (Sept. 30, 1996).

494. See, e.g., ICTY, Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 24(3) (Sept. 2009), available at http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf [hereinafter ICTY Statute]; Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, art. 23(3), U.N. Doc. S/RES/955 (Nov. 8, 1994) [hereinafter ICTR Statute].

495. See Guiding Principles on Internal Displacement, *supra* note 484; Special Rapporteur on Commission on Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Sub-Comm'n on the Promotion and Prot. of Human Rights, U.N. Doc. E/CN.4/Sub.2/2005/17, Annex (June 28, 2005) (by Paulo Sérgio Pinheiro) [hereinafter Pinheiro Principles]. The Pinheiro Principles were later endorsed by the Sub-Comm'n on Promotion & Prot. of Human Rights Res. 2005/21, Rep. of the Sub-Comm'n on the Promotion and Prot. of Human Rights, 57th Sess., July 25–Aug. 12, 2005, ¶ 5, U.N. Doc. E/CN.4/Sub.2/2005/44 (Oct. 17, 2005).

496. See Guiding Principles on Internal Displacement, *supra* note 484, princ. 29.2, at 14 ("Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement."); Pinheiro Principles, *supra* note 495, princ. 2.1, at 6 ("All refugees and displaced persons have the right to have restored to them any housing, land and/or

mention “housing” and “land,”⁴⁹⁷ and if return and restitution are not possible, compensation is required.⁴⁹⁸ The documents, call on “competent” authorities⁴⁹⁹ to implement their provisions; without binding law, “everything, including [refugee and IDP] protection, is negotiable.”⁵⁰⁰

Finally, the Pinheiro Principles, adopted in 2005, also address the rights of nonowners. It asserts that, to the extent possible, tenants should be able to return and “repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights,”⁵⁰¹ and addresses the rights of “secondary occupants,” individuals who took possession of property before the return of their lawful owners. Those rights relate primarily to due process protections,⁵⁰² calling on the state to identify, or provide, alternative housing for those occupants left without a place to live,⁵⁰³ at least in the case of secondary occupants acting in “good faith.”

2. Right to an Adequate Standard of Living and Related Socio-Economic Rights

Land is not included in Article 11 of the ICESCR, but as the cCommittee most recently recalled in articulating the right to water—also appearing nowhere in the covenant—the list of components of the right to an adequate standard of living was not intended to be exhaustive.⁵⁰⁴ The text of the provision reads,

property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”).

497. See Pinheiro Principles, *supra* note 495, princ. 2.1, at 6.

498. *Id.*

499. See Guiding Principles on Internal Development, *supra* note 484, princ. 29.2; Pinheiro Principles, *supra* note 484.

500. See Leckie, *supra* note 485, at 63 n. 107 (quoting Guy S. Goodwin-Will).

501. Pinheiro Principles, *supra* note 495, princ. 16.1, at 12.

502. See *id.* princ. 17.1, at 12.

503. See *id.* princ. 17.3, at 13 (“In cases where evictions of secondary occupants are justifiable and unavoidable, States should take positive measures to protect those who do not have the means to access any other adequate housing other than that which they are currently occupying from homelessness and other violations of their right to adequate housing. States should undertake to identify and provide alternative housing and/or land for such occupants, including on a temporary basis, as a means of facilitating the timely restitution of refugee and displaced persons’ housing, land and property.”).

504. CESCR, General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th Sess., ¶ 3, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter General Comment No. 15].

in relevant part: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, *including* adequate food, clothing and housing, and to the continuous improvement of living conditions.”⁵⁰⁵ The use of the word “including” indicates that there may be other components than food, clothing, and housing.⁵⁰⁶ The Committee notes that the right to water, while not in the text of the covenant “clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.”⁵⁰⁷

Similarly, land is a fundamental but limited resource required for survival. It is undeniably a resource for realizing the rights to adequate housing, food, and water in the ICESCR.⁵⁰⁸ This is true for urban and peri-urban areas,⁵⁰⁹ where the market facilitates the transfer of resources from the land to individuals, but it is especially important in rural communities where few options exist beyond the land itself.⁵¹⁰ Those without access to land are often “the poorest of the poor”⁵¹¹ with no access to credit. Landlessness “creat[es] an obstacle to the full realization of the right to adequate housing,”⁵¹² and can also result in poor health, hunger and food insecurity, and severe poverty.⁵¹³

The impact of landlessness on tenure security and the related housing and property rights is perhaps most obvious. While there is no absolute right to occupy property, all persons

505. ICESCR, *supra* note 36, art. 11(1) (emphasis added).

506. See General Comment No. 15, *supra* note 504, ¶ 3.

507. *Id.* The committee also noted that it had previously recognized water as a human right in General Comment No. 6, and noted that water is “also inextricably related to the right to the highest attainable standard of health.” *Id.*

508. See *id.*

509. See 2008 Report of the Special Rapporteur on Adequate Housing, *supra* note 421, ¶ 77.

510. See *supra* Part II.C..

511. Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Comm’n on Human Rights, ¶ 40, U.N. Doc. E/CN.4/2005/48 (Mar. 3, 2005) (by Miloon Kothari) [hereinafter 2005 Report of the Special Rapporteur on Adequate Housing].

512. *Id.* ¶ 33.

513. See *id.* ¶¶ 40–42.

must have a degree of tenure security.⁵¹⁴ Ownership is not necessarily required, and other options include “rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property.”⁵¹⁵ For housing to be accessible, land, too, must be accessible.⁵¹⁶ Indeed, “[l]and is often a necessary and sufficient condition on which the right to adequate housing is absolutely contingent for many individuals and even entire communities.”⁵¹⁷ To be secure and habitable, there must be adequate space to protect individuals “from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors.”⁵¹⁸ Thus, “[t]here is a clear and intrinsic link between access to land and the right to adequate housing.”⁵¹⁹

Landlessness is both a cause and consequence of unlawful and arbitrary evictions, which occur globally with alarming frequency despite developed international legal standards⁵²⁰ and are often carried out violently,⁵²¹ infringing rights to privacy and security of person and the right to be free from inhuman or degrading treatment.⁵²² While evictions are often identified as

514. See General Comment No. 4, *supra* note 429, ¶ 8(a) (defining tenure security as “a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats”); see also Human Rights Council, *Basic Principles and Guidelines on Development-Based Evictions and Displacement*, ¶ 2, U.N. Doc. A/HRC/4/18, Annex I (Feb. 5, 2007).

515. General Comment No. 4, *supra* note 429, ¶ 8(a); see Human Rights Council, *supra* note 514, ¶ 2.

516. See General Comment No. 4, *supra* note at 429, ¶ 8(e).

517. 2005 Report of the Special Rapporteur on Adequate Housing, *supra* note 511, ¶ 41.

518. See CESCR General Comment No. 4, *supra* note 429, ¶ 8(d).

519. 2005 Report of the Special Rapporteur on Adequate Housing, *supra* note 511, ¶ 41.

520. See General Comment No. 7, *supra* note 472, ¶ 14 (“In cases where eviction is considered to be justified [such as consistent nonpayment of rent], it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.”); *id.* ¶ 1; see also Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Rep. of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, Comm’n of Human Rights, ¶¶ 13–17, U.N. Doc. E/CN.4/2004/48 (Mar. 8, 2004) (by Miloon Kothari) [hereinafter 2004 Report of the Special Rapporteur on Adequate Housing].

521. See, e.g., General Comment No. 7, *supra* note 472, ¶ 6.

522. ICCPR, *supra* note 36, arts. 7, 17. Communities that are expelled from their land are increasingly criminalized and treated badly even after they have already been

taking place in urban areas, they also frequently occur in rural areas. Evictions obviously violate the right to housing, but also lead to increased social inequality, social conflict, and segregation.⁵²³

Access to land is also “one of the key elements necessary for eradicating hunger in the world,”⁵²⁴ and “[m]any rural people suffer from hunger because either they are landless, they do not hold secure tenure, or their properties are so small that they cannot grow enough food to feed themselves.”⁵²⁵ In defining the obligations of states regarding the right to food, which includes a fundamental right to be free from hunger,⁵²⁶ the Special Rapporteur on the Right to Food has consistently referred to the necessity of land in respecting, protecting, and fulfilling the right.⁵²⁷ Evictions from land also intensify violations of the right to food “especially if the land was their primary means of feeding themselves.”⁵²⁸ The Special Rapporteur on the Right to Food has documented numerous cases in which evictions from land have led to serious violations of the right to food.⁵²⁹ Landlessness and evictions also threaten access to safe drinking water,⁵³⁰ which cannot be denied on the grounds of “housing or land status.”⁵³¹ Similarly, insofar as land access impacts the availability of food

left homeless. 2005 Report of the Special Rapporteur on Adequate Housing, *supra* note 511, ¶ 33.

523. Rural evictions are also a problem. *See* Human Rights Council, *supra* note 514. The special rapporteur on the right to housing has done a great deal of work in looking at the multifaceted impact of evictions on individuals and on communities. *See, e.g.*, 2004 Report of the Special Rapporteur on Adequate Housing, *supra* note 520, ¶¶ 68–72.

524. 2002 Report of the Special Rapporteur on the Right to Food, *supra* note 436, ¶ 22.

525. *Id.* ¶ 23.

526. Among the many enumerated rights in the two core human rights treaties, the ICCPR and the ICESCR, only one is qualified as “fundamental”: the right to be free from hunger in Article 11 of the ICESCR. *See* ICESCR, *supra* note 36, art. 11(2).

527. *See generally* 2008 Report of the Special Rapporteur on the Right to Food, *supra* note 437; 2002 Report of the Special Rapporteur on the Right to Food, *supra* note 520.

528. *See* Preliminary Report of the Special Rapporteur on the Right to Food, *supra* note 435, ¶¶ 27, 28.

529. *See, e.g.*, Special Rapporteur on the Right to Food, *Rep. of the Special Rapporteur on the Right to Food: Addendum: Mission to Guatemala*, Comm’n on Human Rights, U.N. Doc. E/CN.4/2006/44/Add.1 (Jan. 18, 2006) (by Jean Ziegler).

530. *See, e.g.*, COHRE, MANUAL ON THE RIGHT TO WATER AND SANITATION 10 (2008) (noting that evictions can lead to resettlement to areas lacking adequate water and sanitation services).

531. General Comment No. 15, *supra* note 504, ¶ 16(c).

and water, the right to the highest attainable standard of health can also be affected by the condition of landlessness.

Finally, land is related to the right to work, which “includes the right of everyone to the opportunity to gain his living by work that he freely chooses or accepts.”⁵³² Yet tenure security, particularly in rural areas, is too often “strictly tied to one’s status as a productive labourer.”⁵³³ The absolute necessity of maintaining some access to land means, for some individuals or communities, that they are forced to work in dangerous or deeply unfair conditions. These semi-bonded conditions violate not only the right to work⁵³⁴ and the right to just and favorable conditions of work,⁵³⁵ but also the prohibition against forced or compulsory labor.⁵³⁶

The land-related rights articulated in Article 11 and elsewhere in the Covenant are indispensable for leading a life in human dignity⁵³⁷ and inherently linked to other human rights,⁵³⁸ including the inherent right to life⁵³⁹ in the ICCPR.⁵⁴⁰ These

532. ICESCR, *supra* note 36, art. 6(1).

533. 2005 Report of the Special Rapporteur on Adequate Housing, *supra* note 511, ¶ 41.

534. *See* ICESCR, *supra* note 36, art. 6.

535. *See id.* art. 7.

536. *See* ICCPR, *supra* note 36, art. 8. The U.N. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, to which Nepal acceded on January 7, 1963, banned debt bondage:

Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined . . .

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery art. I, Sept. 7, 1956, 266 U.N.T.S. 3; Nepali & Pyakuryal, *supra* note 127, at 85 (listing some of the bonded labor systems that exist in Nepal: *Haliya*, *Kamaiya*, *Haruwa* and *Charuwa* as well as *Balighare*, *Kholo* and *Kha Pratha*). This Report will discuss only the most prevalent forms of bonded labor: *Kamaiya*, *Haliya*, and *Haruwa*.

537. *See* General Comment No. 4, *supra* note 429, ¶¶ 7, 9; General Comment No. 12, *supra* note 433, ¶ 4; General Comment No. 15, *supra* note 504, ¶ 1.

538. *See, e.g.*, General Comment No. 15, *supra* note 504, ¶ 1 (noting that water is a prerequisite to other human rights); General Comment No. 4, *supra* note 429, ¶ 9 (noting that other human rights, including the right to freedom of expression, freedom of association, freedom of residence, and the right to participate in public decision making, are indispensable if the right to adequate housing “is to be realized and maintained by all groups in society.”).

539. ICCPR, *supra* note 36, art. 6; *see, e.g.*, General Comment No. 15, *supra* note 504, ¶¶ 1, 3, 11; General Comment No. 14, *supra* note 55, ¶¶ 3, 4.

rights have been affirmed in numerous treaties, principles, and declarations.⁵⁴¹ The general comments of the Committee⁵⁴² have delineated the contours of the normative content of the rights to housing,⁵⁴³ food,⁵⁴⁴ water,⁵⁴⁵ work, and health, among other

540. See General Comment No. 7, *supra* note 472 (quoting the ICCPR).

541. With respect to housing, for example, see UDHR, *supra* note 427, art. 25; European Social Charter art. 16, Oct. 18, 1961, 529 U.N.T.S. 89 (entered into force Feb. 26, 1965) (affirming the right of the family to social, legal and economic protection by means including providing family housing); ICESCR, *supra* note 36, art. 11(1); CERD, *supra* note 36, art. 5(e)(iii) (requiring the prohibition of racial discrimination in all forms in the enjoyment of the right to housing); CEDAW, *supra* note 36, art. 14(2)(h) (prohibiting discrimination on the basis of sex in the enjoyment of adequate living conditions, "particularly in relation to housing, sanitation, electricity and water supply"); Convention on the Rights of the Child, *supra* note 36, art. 27(3) (requiring states parties to take measures to provide material assistance with regard to housing for children and those responsible for them who are in need).

542. The CESCR decided to adopt General Comments, which aim to clarify state obligations and interpret the substantive provisions of the ICESCR, at its second session in 1988. See CESCR, *Introduction: The Purpose of General Comments*, ¶ 1, U.N. Doc. E/1989/22, Annex III, ESCOR, 3d Sess., Supp. No. 4 (1989). The Committee had been authorized to do so by ECOSOC Resolution 1987/5, which was endorsed by General Assembly Resolution 42/102. See also CESCR, *Report on the Twentieth and Twenty-First Sessions*, ¶ 51, U.N. Doc. E/2000/22 (2000) (describing the role of General Comments). General Comments are not binding sources of law, but are considered authoritative interpretations of the ICESCR. The experience of the Committee in reviewing state party reports under the covenant, moreover, ground the General Comments in practical experiences. See SHABTAI ROSENNE, *PRACTICE AND METHODS OF INTERNATIONAL LAW* 19 (1984) (describing United Nations documents as peremptory norms of international law).

543. The CESCR has identified the following aspects of the right to housing that must be taken into account when considering implementation of the right to "adequate housing": legal security of tenure; availability of services, materials, facilities, and infrastructure; affordability; habitability; accessibility; and location. General Comment No. 4, *supra* note 429, ¶ 8. The committee emphasizes that the right to housing "should not be interpreted in a narrow or restrictive sense," and "should be seen as the right to live somewhere in security, peace and dignity." *Id.* ¶ 7. The committee further has concluded that forced evictions are *prima facie* incompatible with the requirements of the covenant, and adopted a general comment identifying what constitutes a forced eviction and what protections against forced evictions states parties are required to adopt. *Id.* ¶ 18; General Comment No. 7, *supra* note 472.

544. The CESCR considers that the core content of the right to adequate food includes adequacy and sustainability of food availability and access. Specifically, that the right to adequate food implies "the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights." General Comment No. 12, *supra* note 433, ¶ 8.

545. The CESCR has identified the following factors as relevant in considering whether there is water is adequate for human dignity, life, and health: availability; quality; accessibility (including physical and economic accessibility, as well as

rights. The special procedures whose mandates relate to these rights have also, in their annual reports and country mission reports, analyzed developments in international law and clarified specific questions relating to country obligations.⁵⁴⁶

3. Specific Land Rights Protections

Although there are few blanket protections to access to land in international law, explicit rights to land have been developed in two areas, providing protections to indigenous people and to women. These protections are carved out in both hard- and soft-law documents.

Land access and use is frequently tied to the spiritual, cultural, and social identities of peoples. As such, land rights have been developed in the sphere of indigenous rights. Convention 169 on Indigenous and Tribal Peoples, which was adopted by the International Labour Organization in 1989,⁵⁴⁷ is legally binding on state parties and is the only binding international instrument related to the rights of indigenous peoples. The convention establishes the right of indigenous

nondiscrimination); information accessibility (including the right to seek, receive, and impart information about water). General Comment No. 15, *supra* note 504, ¶ 12.

546. The relevant mandates are adequate and nondiscriminatory housing as a component of the right to an adequate standard of living; the right to food; access to safe drinking water and sanitation; and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Additional mandates, including the question of human rights and extreme poverty, have also discussed issues relating to Article 11 of the ICESCR. The special procedures of the Human Rights Council (previously the Commission on Human Rights) cover both country and thematic mandates. The thematic procedures, whose mandates currently cover a broad range of substantive issues (as of September 2009, there are thirty thematic mandates), “monitor, examine, advise and publicly report on a thematic issue.” See OFFICE OF THE OHCHR, UNITED NATIONS SPECIAL PROCEDURES: FACTS AND FIGURES 2008 (2008). The special procedures act urgently on information suggesting that a human rights violation is about to happen or is occurring, respond to allegations that a violation has taken place, undertake country visits and provide advice to governments, examine a global phenomenon, clarify the applicable international legal framework, and present annual reports to the Human Rights Council. AMNESTY INT’L, UNITED NATIONS SPECIAL PROCEDURES: BUILDING ON A CORNERSTONE OF HUMAN RIGHTS PROTECTION 5 (2005). The substantive reports of the special rapporteurs provide analysis on the development of international law and outline the contours of government obligations in very specific fields. The findings and analyses of the special rapporteurs may also constitute evidence of customary international law. See, e.g., Nathanael Heasley et al., *Impunity in Guatemala: The State’s Failure to Provide Justice in the Massacre Cases*, 16 AM. U. INT’L L. REV. 1115, 1129 (2001).

547. Convention No. 169, *supra* note 40.

peoples to “exercise control, to the extent possible, over their own economic, social and cultural development.”⁵⁴⁸ The convention includes a section on land, and requires state parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights.⁵⁴⁹ In essence, “measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.”⁵⁵⁰ The convention also requires the provision of legal procedures to resolve land claims,⁵⁵¹ establishes rights over natural resources,⁵⁵² protects against forced removal,⁵⁵³ and establishes a right of return or compensation for lost land through either land (of at least equal quality and quantity) or money.⁵⁵⁴

The 2007 Declaration on the Rights of Indigenous Peoples affirmed these provisions, stating that “[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”⁵⁵⁵ The declaration, while not binding, states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a “right to redress . . . for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged.”⁵⁵⁶ Both the convention and the declaration emphasize participatory dialogue and the need for free, prior, and informed consent with respect to decision making about lands occupied by indigenous peoples,⁵⁵⁷ especially where governments are considering the relocation of such

548. *Id.* art. 7.

549. *Id.* art. 14.

550. *Id.*

551. *Id.*

552. *Id.* art. 15.

553. *Id.* art. 16.

554. *Id.*

555. United Nations Declaration on the Rights of Indigenous Peoples, art. 26(1), G.A. Res. 61/295, U.N. Doc. A/Res/61/295 (Sept. 13, 2007) [hereinafter Declaration on the Rights of Indigenous Peoples]. The declaration was adopted by the General Assembly but is not legally binding on state parties.

556. *Id.* art. 28(1); *see also id.* art. 26(2)–(3).

557. *Id.* arts. 10, 28, 29, 32.

peoples from their land.⁵⁵⁸ These protections are also necessary in light of the frequent cases of displacement from lands of indigenous peoples, which can deny access to culturally specific sources of nutrition and medicine.⁵⁵⁹

The core treaties also require states to consider facilitating equal access to and ownership of land by rural women. This is made explicit under the provisions of CEDAW,⁵⁶⁰ which also directs states to ensure that women have “access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.”⁵⁶¹ Moreover, the CESCER emphasizes the need to guarantee “full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property,”⁵⁶² and the FAO’s Voluntary Guidelines also suggest prioritizing access to land for women as a means of eradicating hunger.⁵⁶³ Finally, a number of Commission on Human Rights (now Human Rights Council) resolutions⁵⁶⁴ and resolutions by other human rights bodies⁵⁶⁵

558. See also discussion *supra* Part IV.B.

559. See General Comment No. 14, *supra* note 55, ¶ 27.

560. See generally CEDAW, *supra* note 36.

561. *Id.* art. 14(g).

562. General Comment No. 12, *supra* note 433, ¶ 26.

563. See FAO VOLUNTARY GUIDELINES, *supra* note 425, ¶ 8.1.

564. In the most recent resolution on the subject, the commission notes that “women’s equal ownership, access to and control over land and the equal right to own property and to adequate housing contribute to the full realization of human rights.” Comm’n on Human Rights Res. 2005/25, Rep. on the Sixty-First Session, Mar. 14–Apr. 22, 2005, U.N. ESCOR, Supp. No. 3, E/2005/23, at 62 (Apr. 15, 2005). The resolution further encourages states to

support the transformation of customs and traditions that discriminate against women and deny women security of tenure and equal ownership of, access to and control over land . . . and to take other measures to increase access to land and housing for women living in poverty, particularly female heads of household.

Id. See also previous resolutions on the subject, including Comm’n on Human Rights Res. 2003/23, Rep. on the Fifty-Ninth Session, Mar. 17–Apr. 24, 2003, U.N. ESCOR, Supp. No. 3, E/2003/23, at 90 (Apr. 22, 2003); and Comm’n on Human Rights Res. 2001/34, Rep. on the Fifty-Seventh Session, Mar. 19–Apr. 27, 2001, U.N. ESCOR, Supp. No. 3, E/2001/23, at 172 (Apr. 23, 2001).

565. See, e.g., Comm’n on the Status of Women Res. 42/1, Rep. on the Forty-Second Session, Mar. 2–13, 1998, U.N. ESCOR, Supp. No. 7, E/1998/27, at 34 (1998) (“[S]ecure land rights are key rights for the economic empowerment of women”); Sub-Comm’n on the Prevention of Discrimination and Prot. of Minorities Res. 1998/15, Rep. on its Fiftieth Session, Aug. 3–28, 1998, U.N. Doc. E/CN.4/1999/4, at 44 (Aug. 21, 1998).

call for equal access to land for women, and the Special Rapporteur on the Right to Adequate Housing has also provided detailed analyses on the ways in which facilitating such access empowers women and promotes the implementation of a range of human rights for woman and their children.⁵⁶⁶ The international framework has also established that facilitating women's access to land will help fulfill their rights more generally. States are obligated to ensure all rights equally and without discrimination.⁵⁶⁷

CONCLUSIONS AND RECOMMENDATIONS

*"Laws change; people die; the land remains."*⁵⁶⁸

566. The special rapporteur has considered the land rights of women in the 2003, 2005, and 2006 annual reports. *See generally* Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination, *Women and Adequate Housing: Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination*, U.N. Doc. E/CN.4/2006/118 (Feb. 27, 2006) (by Miloon Kothari); Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, *Women and Adequate Housing: Study by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, U.N. Doc. E/CN.4/2005/43 (Feb. 25, 2005) (by Miloon Kothari); Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination, *Women and Adequate Housing: Study by the Special Rapporteur on Adequate Housing as a Component to an Adequate Standard of Living, and on the Right to Non-discrimination*, U.N. Doc. E/CN.4/2003/55 (Mar. 26, 2003) (by Miloon Kothari).

567. The UDHR states that "[a]ll human beings are born free and equal in dignity and rights." UDHR, *supra* note 427, art. 1. Article 2 of the UDHR, as well as Article 2(1) of the ICCPR, and 2(2) of the ICESCR, obligates states to guarantee that rights will be provided without discrimination. *See* ICESCR, *supra* note 36, art. 2(2); ICCPR, *supra* note 36, art. 2(1); UDHR, *supra* note 427, art. 2. Article 3 of both covenants obligates states to provide the rights under the covenant equally to men and women. *See* ICESCR, *supra* note 36, art. 3; ICCPR, *supra* note 36, art. 3. Both covenants reiterate these principles throughout the language of the treaties. The CESCR has adopted general comments that specifically address equality between men and women, and the principle of nondiscrimination, in relation to economic, social, and cultural rights. *See* CESCR, General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of all Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2005/4 (Aug. 11, 2005); CESCR, General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

568. Abraham Lincoln, US President, *quoted in* PETER BLAKE, *GOD'S OWN JUNKYARD: THE PLANNED DETERIORATION OF AMERICA'S LANDSCAPE* (1964).

A. *Conclusions*

The issue of land in Nepal will remain a complex one for some time. However, it is one that the government will have to address. Indeed, the human rights implications that access to land has on individuals living in the Terai—and as a result on the Nepal government's international human rights obligations—are clear. Moreover, Nepal has other reasons for dealing with access to land. As one land activist said, "There is political instability, but without social justice, the conflict between the haves and have-nots will not end. We've had ten years of armed conflict, and now democracy, so we are hopeful. But without solving these issues of land reform and social justice, there will be no peace."⁵⁶⁹

B. *Recommendations*

1. To the Government of Nepal

Constitutional recommendations: The government of Nepal should work to pass stronger provisions in its final constitution, clarifying the distinction between Part IV and Part III. Human rights obligations that ensure equality and nondiscrimination and access to housing, food, and water, should remain in or be moved to Part III where they can be enforced in court.

Legislative recommendations: The government should review the 1964 Land Reform Act and include provisions for recognition of unregistered tenants and ensure secure tenure for all tenants. In particular, the Lands Act must strengthen evictions protections and recognize other forms of tenancy security than the land certificate. Stronger protections against forced evictions must be adopted in the Lands Act or separate legislation and monitored at the local, regional, and central level.

Policy recommendations: The High-Level Land Reform and Landlessness Commissions should be provided with clear mandates and jurisdictions to review and carry out their work. These should be made more inclusive and commissions should be invited to engage with the population in Nepal. It should have explicit powers to interact with the Landless and Dalit Commissions. The Human Rights Commission should adopt a mandate to review the place of land and land access in the

569. Interview with Suprasad Bandari, *supra* note 22.

international human rights framework. The mandate should consider a comprehensive set of rights potentially affected by land and should focus on the relevant obligations of states.

2. To Nepali Civil Society

Recognizing that access to land impacts a wide range of rights and social issues in Nepal, civil society leaders working on economic and social rights as well as civil and political rights should consider land access in their annual programming. In particular, programs focusing on anti-discrimination should specifically consider how vulnerable and excluded populations can access natural resources and loans, including micro-finance programs. The National Human Rights Commission should engage local civil society efforts related to socio-economic rights.

The donor and finance community should support programs focusing on economic and social rights initiatives, and in particular consider the place of those rights within existing transitional justice initiatives.

3. To the International Community

The international community should expand its programming on economic and social rights in Nepal, and, in particular, examine the role of those rights in transitional justice programs, including at the OHCHR. International actors at OHCHR and the Human Rights Council should support the conclusions of the mandates of the special rapporteurs on the right to adequate housing and on the right to food that the right to access to land impacts a range of human rights issues and should be recognized as an individual human right.

ANNEX I: Schedule Of Interviews, March 2009

TIME INTERVIEW

Saturday, March 14, 2009

- 0800 Community Self-Reliance Center
Jagat Basnet, Executive Director
Krishna Pathak, Advisor
- 1100 High Level Land Reform Commission
Honorable Haribol Gajurel, Chair
- 1530 Nepal Institute of Development Studies (NIDS)
Ganesh Gurung, Sociologist

Sunday, March 15, 2009

- 1300 Interviews in Kamdi VDC, Banke District, Nepal.
A total of 80 people for large group interview.
Individual interviewees:
Danda Sharma, Organizer, National Land Rights
Forum (NLRF)
Bishnu Pokharel, Centre for Social Development and
Research
Devi Thapa, Centre for Social Development and
Research
Bandu Ram Chaudri, Land rights activist and tenant
farmer
Unnamed Interviewee
Unnamed Interviewee
- 1500 Interviews in Bankatti VDC, Banke District
Anon. Woman
Anon. Woman
Anon. Man
Anon. Man

Anon. Man

Anon. Man

Anon. Man

Monday, March 16, 2009

- 1030 Community Self-Reliance Center, Kailali District
Office, Kailali District, Nepal
Jawal Singh Tiruwa, Officer
Khusiram Chaudhary, Activist
Teeka Bohura, Activist
Amod K. Poudyal, Volunteer, and Lecturer, Statistics,
Tribhuvan University
National Land Rights Forum (NLRF)
Janardan Chaudhary, Organizer
- 1130 Interviews in Peharani VDC, Kailali District
Total of 52 people for large group interview.

Tuesday, March 17, 2009

- 1200 United Nations Development Programme, UN
Resident Coordinator's Unit, Kathmandu, Nepal
Seema Rajouria, National MDGs Campaign and
Advocacy Specialist
- 1600 United States Embassy, Kathmandu, Nepal
Anne M. Bennett, Political/Economic Officer
- 1830 ActionAid Nepal, Kathmandu, Nepal
Bimal Kumar Phnuyal, Country Director

Wednesday, March 18, 2009

- 0900 CARE Nepal, Kathmandu, Nepal
Alka Pathak, Country Director
Sandesh Singh Hamal, Program and Policy Co-
Coordinator

- 1030 Danida HUGOU, Kathmandu, Nepal
 Lars Peter Christensen, Coordinator
- 1230 Community Self-Reliance Centr, Kathmandu, Nepal
 Jagat Deuja, Programme Manageer
- 1330 UN Office of the High Commissioner for Human
 Rights, Kathmandu, Nepal
 Chitrlekha Marie Massey, Coordinator,
 Discrimination and Economic, Social and Cultural
 Rights (ESCR) Team
 Ratna Shrestha, Program Officer
- 1800 *Dinesh Tripathi*, Advocate, Supreme Court,
 Kathmandu, Nepal

Thursday, March 19, 2009

- 1000 International Center for Transitional Justice,
 Kathmandu, Nepal
 Carla Fajardo, Transitional Justice Specialist (South
 Asia)
 Warisha Farasat, Program Officer
- 1600 American Bar Association Rule of Law Initiative,
 Kathmandu, Nepal
 Kaya Ikuma, Program Director

ANNEX II: Schedule of Interviews, May 2009

Site visits: May 11–15, 2009

Team 1: Western Region—Rupandehi and Nawalparasi Districts

Crowley team: Professor James Kainen, Dr. Aoife Nolan, David Mandel-Anthony, Amisha Sharma

Monday, May 11, 2009

TIME	INTERVIEW
0900	Interviews in Khadgabangai VDC, Rupandehi District A total of 120 people for large and small group interviews. Individual interviewees: <i>Bati Sunar</i> <i>Dhan Bahadur Sunar</i> <i>Juna Sunar</i> <i>Lakshmi Pariyar</i> <i>Shiva Pujan Mallaha</i> <i>Shyam Kumari Rana</i> <i>Sohan Bahadur Kumal</i> <i>Sumitra Sunar</i> <i>Swar Prasad Tharu</i> <i>Syam Kumari Rana</i>

Tuesday, May 12, 2009

0900	Interviews in Kerwani VDC, Rupandehi District A total of 30 people for large and small group interviews. Individual interviewees: <i>Bishnu Choudhary</i> <i>Bishnu Kumal</i> <i>Champa Khausir</i>
------	--

Chiraiti Mushahar
Guru Prasad
Jahida Muslim
Keshari Hiradas
Krishna Kala
Krishna Pariyat
Kumari Kumar Jojti
Maya Pariyar
Maya Sharma
Ram Ashraya
Ram Dutta Harijan
Rita Chaudury
Sorathi Tharu
Suharati Chaudury

1400

Interviews in Suryapura VDC, Rupandehi District.
A total of over 200 people for large and small group
interviews.

Individual interviewees:

Devi Magar
Dhanrupee Pariyar
Dhisaiyana Harijan
Gopal Bahadur KC
Hasta Bir BK
Jung Bahadur Dhobi
Khimi GC
Krishna Devi Pariyar
Mahader Kewat
Meena Darji
Muhammad Ali Darji
Ram Bahadur Pun
Sukmaya Durji
Uma BK
Vin Bahadur Pariyar
Vishnu BK
Yam Kumari Sunar

Wednesday, May 13, 2009

- 0900 Land Revenue Office, Rupandehi District
 Ram Narayan Pandey, Chief Land Revenue Officer
- 1100 District Office, Rupandehi District
 D.P. Pokrel, Assistant Chief District Officer
- 1230 Land Surveyor Office, Rupandehi District
 Baburam Bhandari, District Land Survey Officer
- 1400 Interviews with local political party leaders,
 Rupandehi District
 Mirolam Giri, District Secretary, Communist Party of
 Nepal—United Marxist-Leninist
 Ram Chandra Dhaltal, District Chair, Nepali Congress
 Party
 Yagya Pakhore, District Chair of United Communist
 Party of Nepal—Maoist

Thursday, May 14, 2009

- 0900 Interviews in Godiparsauri VDC, Nawalparasi
 District
 A total of 40 people for large and small group
 interviews.
 Individual interviewees:
 Ram Avatar Harijan (*Pres. Of the Nawalparisi Land
 Rights Forum*)
 Brij Bhan Koiri (*land-rights activist*)
 Subha Wati Pasa
 Nimali Charmar
 Bulldhu Harijan
 Gauri Shani
- 1400 Interviews in Gopinganj VDC, Nawalparasi District
 A total of 50 people for large and small group
 interviews.

Individual interviewees:

*Chitra Kumari Tharu**Ganga Chaudury**Jeet Kumari Tharu**Lela Wati Tharu**Manindra Tharu**Radhar Tharu**Ram Lakhan Harijan**Ram Narayan Tharu**Sita Devi***Team 2: Mid-Western Region—Banke and Dang Districts**

Crowley Team: Professor Anil Kalhan, Professor Martha Rayner,
Millie Canter, Benjamin Goldstein, Noushin Ketabi

Monday, May 11, 2009

0900 Interviews in Argu VDC, Dang District
A total of 60 people for large and small group
interviews.

Individual interviewees:

*Falupati Chaudhary**Haule Chaudhary**Lila Chaudhary**Nandaram Chaudhary**Pauli Chaudhary**Prem Chaudhary**Prem Saeliari**Sita Chaudhary**Sowali Chaudary**Unnamed Interviewee**Unnamed Interviewee***Tuesday, May 12, 2009**

0900 Interviews in Arnahawa VDC, Dang District
A total of 25 people for large and small group
interviews.

Individual interviewees:

Anda Kalikumal

Devi Kumal

Diluram Kumal

Jamaka Karki

Prembahadur Kumal

Raj Kumar Shrestha

Sarda K.C.

Sharada Pandey

Tolbahadur Kumal

Unnamed Interviewee

Unnamed Interviewee

Unnamed Interviewee

- 1400 Society Welfare Action Nepal (SWAN), a Kamlahari
NGO, Dang District
Krishna Chaudhary, Chair

Wednesday, May 13, 2009

- 0900 Interviews in Kamdi VDC, Banke District
A total of 60 people for large and small group
interviews.
Individual interviewees:
Bihari Passi
Bishnu Roka
Dalnuttu Tharu
Gayan Bahadur Rokka
Gyan Bahadur
Mangali Tharu
Mohi Sargaban
Nagendra Prasad Tiwari
Rima Kahar
Sherbahadur Basnet
Sukadaiya
Tulsi Sunar

Thursday, May 14, 2009

- 0900 Interviews in Bankatti VDC, Banke District
A total of 40 people for large and small group interviews.
Individual interviewees:
Asharfi Chauhan
Bhaganti Prasad Raidas
Gaya Prasad Harijan
Interviewee
Juwala Prasad Yadav
Nanka Dodiya
Vijay X

Friday, May 15, 2009

- 0900 Interviews with local political party leaders
Vijaya Kumar Gupta, Advocate, and Member, Terai
Madesh Democratic Party
Ganesh Khanal, District Community Leader, United
Communist Party of Nepal—Maoist

Team 3: Far Western Region—Dadeldhura & Kailali

Crowley Team: Crowley Fellow Elisabeth Wickeri, Melia Amal Bouhabib, Corey Calabrese, Ganesh Krishna

Monday, May 11, 2009

- 1945 Interviews with National Land Rights Forum (NLRF)
community organizers
Chhabi Lal Chuara
Jabal Singh Tiruwa
Mahesh Orh
Munni Orh
Nairiram Lohar
Saraswati Nepali

Tuesday, May 12, 2009

0900 Interviews in Manilekh VDC, Dadeldhura District
A total of 20 people for large and small group interviews.

Individual interviewees:

CB Lohar

Digari Lohar

Durga Lohar

Guari Lohar

Kaladevi Lohar

Mangola Lohar

Parwati Lohar

Prem Lohar

Radha Dedi Lohar

Shankar Lohar

Sunita Lohar

Tilak Lohar

1400 Interviews in Amargodhi VDC,
Dhadeldhura District

Devi Parki

Guje Parki

Kalidevi Parki

Kaluwa Parki

Naro Bahn

1900 Interviews at NLRF Training
A total of 30 people for group interview.

Individual interviewees:

Bihagirathi Bk

Chet Nepali

Daniram Tiruwa

Dirga Tiruwa

Khem Nepali

Khusi Ram

Maheshorh X

Parvarti X

Prem Bk
Ram Chunara
Tilka Bahara

Wednesday, May 13, 2009

- 1300 Land Revenue Office, Kailali District
 Shankar Vista, Land Reform Officer
 Hemraz Badu, Officer
 Visnu Prasad Ponta, Officer
 Ganesh Datta Joshi, Officer
- 1300 District Forest Office, Kailali District
 Man Bahadur Khadka, District Forest Officer
- 1430 *Hima Borhara*, Hotel Employee, Kailali
 District
- 1530 Land Taxation Office, Dhangadi, Kailali District
 Hari Yawanil, Land Revenue Officer
 Krishna Jossi, Assistant Land Revenue Officer
 Unnamed Interviewee
 Unnamed Interviewee
 Unnamed Interviewee
- 1700 Gheta VDC, Kailali District
 A total of 25 people for large and small group
 interviews.
 Individual interviewees:
 Kamali BK
 Gokhul Chaudhry
 Ishwari Nepali
 Hemlata BK
 Muna Gurung
 Ram Kumari Chaudhry
 Thakar BK

Thursday, May 14, 2009

- 0900 Peharani VDC, Kailali District
 A total of 60 people for large and small group
 interviews.
 Individual interviewees:
 Basanti Chaudhary
 Deepa Chaudhary
 Ganga Chaudary
 Gaya Prasad Chaudhary
 Kamal Bahadur Chaudhary
 Munni Debi Chaughery
 Nabin BK
 Salikiram Ambai
- 1400 Dodoghora Village, Kailali District
 A total of 16 people for group interviews. Individual
 interviewees:
 Anon. Male
 BSB
 CB
 CTB
 DSB
 G Nepali
 KB
 RB
 RKB
- 1630 Mashurya VDC, Kailali District
 Bhim Chetri, Drink Stand Owner
- 1800 Mashurya Village, Kailali District
 A total of over 150 people for large and small group
 interviews. Individual interviewees:
 Balbahadul Rasaili
 Birmadevi Sunar
 Harilal Rasaili
 Himadevi Sunar

Cheta Raj Puri
Bima Devi B.K.

Friday, May 15, 2009

0900 UN Office of the High Commissioner for Human Rights, Kailali District Office
Deepak Shresta, District Officer, Far-Western Region

Kathmandu: May 18–22, 2009

Monday, May 18, 2009

1000 Landlords from Rupandehi
Mahendra B. Munankami, Landlord
Ramesh Mumankami, Landlord

1030 National Human Rights Commission
Bishal Khanal, Executive Secretary
Munari Khural, Regional Head of Human Rights Promotion Division

1400 CeLLARD
Kishor Siwal, Program Officer, CeLLARD, and Founding Member, Kathmandu School of Law
Sudeep Gautam, Program Manager, Community Mediation Program

1500 Kathmandu School of Law
Yubraj Sangrouta, Dean

1800 Nepali Congress Party
Honorable Lakshaman Prasad Ghimire, Chief Whip

1800 UML Party
Keshav Badal, Standing Committee Member, and former Chair, Badal Land Commission

Tuesday, May 19, 2009

- 1000 United Nations Development Programme (UNDP)
Keith Leslie, Civil Society Team Leader for UNDP
Constitution Building
Suringer Chaudhary, Account Manager
Mena X, Communication and Outreach
Mohan X, Senior Legal Officer
Binda X, Legal Officer
- 1030 Pro-Public
Prakash Mani Sharma, Executive Director
Kabita Pandey, Advocate
Sarmila Shrestha, Advocate
- 1300 Constituent Assembly
Honorable Purna Kumari Subedi, Vice Chair
- 1400 Ministry of Land Reform and Management
Keshav Raj Kanel, Secretary

Wednesday, May 20, 2009

- 0930 Nepal Supreme Court
Dinesh Tripathi, Advocate
- 1000 Nepal Supreme Court
Justice Bal Ram KC
Justice Khil Raj Regmi
Justice Prem Sharma
Justice Anup Sharma
- 1130 Nepal Bar Association
Bishwa K. Mainali, Senior Advocate and President
- 1400 National Land Rights Forum
Suprasad Bandari, Acting Chair *Durga X*, Member

- 1500 Consortium of Constitutional Lawyers—Nepal
Ganesh Bhurtel, Advocate
Surya Dhungel, Senior Partner, Nepal Consulting
 Lawyers
Sombhojen Limbu, Advocate
Gehendra Malla, Advocate
Bandara Sharma, Advocate
Dinesh Tripathi, Supreme Court Advocate
- 1600 High Level Land Reform Commission
Honorable Haribol Gajurel, Chair
Kumar Pendra, Member
Didi Cadura, Secretary
Ratha Prachai, Member
Ghandi Subedi, Member
Ganesh X, Member

Thursday, May 21, 2009

- 1000 International Center for Transitional Justice—Nepal
Carla Fajardo, Head of Office
- 1000 MODE, College of Development Studies (CDS)
Bharat Shrestha, Executive Director
- 1200 Community Self-Reliance Center
Jagat Basnet, Executive Director
- 1500 OHCHR Kathmandu
Dip Magar, Member, Discrimination & Economic,
 Social and Cultural Rights (ESCR) Team
Ratua Seresta, Officer
Sonali Regmi, Thematic Advisor, Discrimination &
 ESCR Team
- 1500 Women for Human Rights, Single Women's Group
Lily Thapa, President
Kanda Sharma, Treasurer
Neera Shrestha, Officer

ANNEX III: Schedule Of Interviews, March–April 2010

Wednesday, March 31, 2010

- 1000 National Resources Parliamentary Committee,
Kathmandu, Nepal
Ram Sharam Gimiri, Secretary
Bishnu Giri, Section Officer
Honorable Shanta Chaudhary, Chair
- 1115 High Level Land Reform Commission, Kathmandu,
Nepal
Honorable Ghanendra Basnet, Chair
Krishna SBC, Secretary, and Secretary of the Ministry
of Land Reform and Management
Nima Chaudhary, Member
Kirda Prasad Chaudhary, Member
- 1300 Landless Commission
Gopal Manigopam, Chair
Krishnabad Rai, Member
Surgesh Nepal, Member, Chair, National Land Rights
Concern Group
- 1500 UN Office of the High Commissioner for Human
Rights
Chitralekha Marie Massey, Coordinator,
Discrimination and Economic, Social and Cultural
Rights(ESCR) Team

Thursday, April 1, 2010

- 1200 Interviews in Kamdi VDC, Banke District, Nepal
A total of 27 people for large group interview.
Individual interviewee:
Danda Sharma, Organizer, National Land Rights
Forum (NLRF)
- 1600 Centre for Social Development and Research, Banke

District, Nepal
Bishnu Pokharel, Officer
Lalita Puri, Activist
Bishnu Roka, Activist
Romharsh Ghital, Activist, UML Tharu Regional
 Committee Member
Bagauti Prasad Radash, Community Leader
Barkuti Basar, Activist

Friday, April 2, 2010

- 1000 Society Welfare Action Nepal, a Kamlahari NGO,
 Dang District
Krishna Chaudhary, Chair
Aasharam Chaudhary, Member
Bhagiram Chaudhary, Member
Lalmani Bhangari, Member
- 1400 Land Reform Office, Butwal VDC, Rupandehi
 District
 Group interview with 18 people total.
 Individual interviewees:
Suwati X
Kalpana X
Dilma Nepali
Raya Ram
Binbar X
Bishnu Chaudhary
Tika Ram Sunar
Yuwar Chaudhary
Mukti X
Suwuar Chaudhari
Raj Kumar Harijan
- 1800 Community Self-Reliance Center, Kathmandu,
 Nepal
Jagat Basnet, Executive Director
Jagat Deuja, Programme Manager